IMPORTANT CORRESPONDENCE.

FRIENDLY DISCUSSION OF PARTY POLITICS IN 1860-1.

Letters of Hon. ROSWELL MARSH, of Steubenville, Ohio, and Hon. CHAS. REEMELIN, of Cincinnati.

[From The Crisis of March 8, 1865.]

In publishing the subjoined letters and some ten or twelve more hereafter, it may be proper to explain how we came by them, and also how the discussion contained therein arose. We heard accidentally of the existence of the correspondence and applied to one of the writers (Mr. REEMELIN) for it, with a view to publish it. He forwarded it with this explanation:

"In 1860 I was one of the Senatorial Electors on the Breckenridge ticket, and as such addressed a meeting of the people of Steubenville. The chief points of my speech were, that there were *four* legitimate questions before the American people, and *one* illegitimate; that the first four were all within the well known powers of the General Government, the other *one* was not, or at least doubtful. The four I stated as follows:

"1. Such treaties with Mexico as secured us the transit over the Isthmus of Tehuantepec and preserved that country its republican independence.

"2. The construction of a railroad to the Pacific through the territories, by land grants for an equivalent of stock in the road, the stocks to be sold after construction, the object being to checkmate England in her policy on the Pacific.

"3. A revision of the tariff, so as to make it as near as possible a free trade measure.

"4. Such laws, in relation to Federal patronage, as should prevent appointments to office to be a bait in our Presidential elections, except to a limited extent, by dividing the Federal offices into classes, so that part should be filled as now at the President's pleasure, but the main body to be filled by regular advances, by fitness at all times, and free from political reasons.

"These four questions the people ignored, and were earnestly discussing the other, *Slavery*, with which they, as Federal constituents, had nothing to do. To show this. I argued at length the powers of the Federal Government in the premises, and showed, as I thought, that the first question to be settled in federal politics was always, 'Where is the plain written authority in the Constitution?' I denied to the Federal Government all authority upon the subject of Slavery, and contended that even the delivery of fugitive slaves was a stipulation between sovereign States, and as such, and such only, obligatory on the States; that a fugitive slave law was an act of supererogation. I asserted that the slavery question was at that time artificially forced into Federal politics, by three great ambitious men, Douglas, Chase and Seward; that those standing behind these men and expecting office by their success, created all the real excitement in the question, and that Northern politicians were making the rights, interests and feelings of the people of the South the play ground of Federal politics. I insisted that the question was not as to *who* should rule, but how much any body should rule; that the Federal patronage was too large, and that its reasonable reduction was the issue, and not slavery.

"To these views Mr. Marsh excepted by the letter which I enclose, dated November 19th, 1860. I replied November 27th, and the correspondence continued until spring."

We shall publish each week a letter from Mr. MARSH and Mr. REEMELIN'S reply, until closed. Four years have passed since

the correspondence—the points discussed are still unsettled. We think the letters will interest our readers, as they come from two gentlemen well known in the State, who represent the two opposite party principles, which have been the point of contest for seventy years.

STEUBENVILLE, Nov. 19, 1860.

Dear Sir: I listened with much interest to your address in this town on the 1st inst., as I always have done to your well considered arguments on any subject, so different from the mere rhapsody and declamation with which most partisan speakers on all sides entertain their audiences. Our National affairs surely have enough of sound philosophical principles in their elementary substance to pay a thinking man richly for searching out and developing them for the earnest instruction and enlightenment of his less favored fellow citizens, instead of entangling them in sophistries or blinding their judgments and substituting passion by ringing the changes on party names which once had a definite idea attached to them, now long since passed away, whilst the names are used by friends and foes as passports for directly antagonistic notions. The philosophical principles of our government found no prototype in the institutions of modern Europe, and consequently not in its recognized social philosophy. Milton, and if I do not mistake, one or two German writers of a still earlier age, shadowed forth some germs of the idea. Luther in fact by boldly claiming freedom for the conscience laid the broad foundation on which personal and civil liberty have since been erected. In fact how could tyranny over the persons of men stand and justify itself in the face of a free and enlightened conscience? It has been repeated so often that the early emigrants to this country came here to enjoy liberty of conscience, that it has almost passed into history that they came for that purpose only. Nothing could be more erroneous. They came to enjoy liberty in both respects. They did not confound liberty with anarchy. Their idea was a community—self-governed under self-imposed restraints, which protected alike the rights of all, whether majorities or minorities, and circumscribed alike the authority of all. I prefer the word authority to power. It imports a lawful origin. Power too often has its origin in the practical application of the tyrant's maxim that "might makes right." The spirit or rather philosophy of our institutions admits no such principle as the foundation of any rightful authority. The elementary principle of our institutions is that the source of all rightful authority is in the governed. It results that all individual restraints are equal upon each, and that the restraints provided in the organic law, the constitution, are safeguards for the individual, no matter who, against the action of the body. Do you not see that before authority emanating from such a source so long as it remains true to its origin there can be no inequality of personal rights or of orders in society. Is it not manifest that so long as public virtue prevails over corrupt ambition and base degradation, the public good, in other words the humanitarian and the utilitarian, must be the true philosophy of such institutions, for the cogent reason that they are the object for the advancement of which the institutions were founded? Is it correct in reasoning upon the operation of institutions so founded to argue that the minority is oppressed by the majority so long as the authority is exercised within the limits of the organic law, and its enactments operate indiscriminately upon all. Would it not be still more incongruous to claim for the minority the authority to control? In how small a minority should the authority be lodged? The history of the human race proves beyond all peradventure, if it proves nothing else, that power, not to say authority, is ever passing from the many to the few; and further, that just in proportion as the members of the minority are diminished the liberties of the majority are abridged until, when all power is concentrated in one hand the residue of the nation, the majority, have no rights the minority is bound to respect. If such has been the denouement of nearly every government heretofore organized amongst men, however originally constituted, does it not show some defect in the principles of its philosophy? or must we come to the melancholy conclusion that no race of mankind are capable of perpetuating the spirit and substance of free institutions, although in a fortunate period of their history men gifted beyond the lot of ordinary mortals had formed and illustrated them by practice under them, and committed them to their keeping with the most solemn injunctions to transmit them unimpaired to the remote posterity of the founders? I for one am not prepared to admit anything so sinister to the future enlightened freedom of my country.

I do not fear discussion. Confident of the soundness and strength of her institutions I desire, I invite the most earnest discussion, the most acute investigation. The only danger I can imagine to our institutions is from the supineness of our freemen. When an election of President takes place in which very few of the freemen participate, there will be danger that the people are about to resign the duty of self-government. Then, not before, they will be ready to resign the reins of government to a minority. I do not claim perfection for our ancestors—their counsels were not always wise, nor did their practice in all cases come up to their theory. I wish I could believe that slavery, African slavery, crept in as the unauthorized acts of individuals; that legislation came only to modify and control an evil it could not eradicate. Although the acts of the colonial legislatures are not now reprinted nor extant, which authorized the introduction and sale of African slaves, there is abundant evidence even in the acts repealing them that such acts did exist in several States. The King's veto repeatedly prevented the repeal of such laws in Virginia. As the new slave States were parts of old ones, no such introductory laws will be found in them. The laws of all of them do, however, prescribe who shall be slaves. It is curious that in Virginia, by express statute, any less than one-fourth African blood is a voter, if free, and may be elected Governor or U. S. Senator, but if born of a slave mother is a slave, even if the African blood is bred out to long flaxen locks, blue eyes, the lilly and rose in the complexion giving token of unmixed Saxon pedigree—and such samples are to be seen. A leading Virginia paper, some years since, admitted that *African slavery, as such*, could not be defended, and boldly defended it irrespective of race. That was at least more in accordance with ancient practice. But our complex system has wisely left it to the States, so far as they are concerned, the United States Constitution merely restraining the States from enacting laws obstructing the recovery of fugitives, and even in that putting such servants on a footing with apprentices.

I have extended my letter much farther than I intended, and yet have hardly broken the subject.

My intention in taking up my pencil was to invite you to a friendly discussion of the subject. The excitement of the election is now over, and even we, may be better prepared to give the just weight to the considerations to be urged on each side than we were before.

There is one other point I will touch: Cass, in a speech in the Senate, some years since, ridiculed the idea of the United States being a sovereignty. The denial lies at the base of all the modern departures from early practice as to the territories—without it all is heresy and nonsense. As a sovereignty the United States carve out a portion of the public domain before there is an individual lawfully there, provide as the Congress sees fit an organization for it and opens it for settlement. Who may settle there? whoever Congress permit. Are they citizens of the United States? They were represented in the Congress. Can they throw off their allegiance by changing their domicil from a State to a territory? Are foreigners invited in? May they deny the jurisdiction of the Government on whose invitation they entered? The States, *as such*, set up a claim to the territories. Why not file a petition for partition? I can not, nor can you, treat such a claim seriously. It is only as citizens of the United States that we have any interest in the territories.

It is claimed that the term territory is equivalent to land. Beware! Look at cotemporaneous use, not search lexicons which never give half the uses. Virginia ceded by the term territory, and reserved one-fourth the land. Has she the right to govern still? Connecticut ceded the territory and reserved nine-tenths of the land. How did the parties understand it? France ceded the territory (French, *territoire*) of Louisiana by the term territory only. Can it be that France is yet rightfully entitled to the power of government over it? Look and see how the cotemporaries understood it on all sides. A claim by France under this new notion would be a perfect sequitur, but it would wake some people as from a delicious dream. From that new stand-point they would at once deny their own position. Some Southern Senator, I do not remember who, has roundly asserted that without the much misunderstood clause respecting the territory and other property, &c., the United States would not have had authority to sell an old cannon or a lot of old muskets. That was putting want of sovereignty strongly, by an example. But, if so, where will the same school find the authority to purchase? Not in that clause—at least not if we adopt the same rules of construction. By those rules the words "to dispose of" can never import to purchase or to acquire. Mr. Jefferson was very much em-

barrassed (having adopted the strictest rules of the strict constructionists) how to justify the purchase of Louisiana and talked seriously of a curative amendment of the Constitution. Finding that the old Federal fathers of the Constitution who remained in Congress did not oppose it *on that ground*, nothing more was heard of the amendment, and the precedent has been repeatedly acted upon since, both to acquire and to cede away both land and jurisdiction by the term territory by force of the plenary authority of the nation as a sovereignty through its constituted organs. You called attention to the phraseology of the ordinance of 1787. Are you aware that all the legislation of those days under the old confederation of independent States was requisitory upon them, not mandatory upon the citizens? The sequence was inevitable. Some States complied with the requisitions, others did not; there was no means of coercion—the confederacy became a rope of sand. The effort now is to construe the present *Union* into a *confederacy* of independent sovereign States—each State a sovereignty, the Union not a sovereignty!!! Hamilton county has as much authority to secede from Ohio as South Carolina has to secede from the Union. An embassador from each would be equally entitled to represent a sovereignty in the Court of France. Under our present Constitution the language of the law making power conforms to the general form of legislative language, mandatory. Look into the acts authorizing Ohio, Indiana, Illinois, Michigan, Iowa, Wisconsin, Minnesota, to form Constitutions. See the Missouri compromise law and acts organizing territories before and since 1820. In fact, outside of the *States* of the Union the United States is known as a nation only, one and indivisible. One attempt and one only, I think, was ever made to treat with a State, and that was in Washington's time; the insolent foreigner had short orders to leave. The limitations and restrictions of the Constitution apply only within the States, without, its action is controlled by the spirit of our institutions. In founding new States in our wide domain we should consider what will constitute the freest, most prosperous, most virtuous people, and those should be adopted. To sanction any other would be an abuse of power, not an exercise of authority. If Brigham Young's system of polygamy best answers the standard, so be it; if it is a curse and a national wickedness the national Government is responsible before the civilized world and before Heaven for every hour it is unprohibited and unpunished.

Excuse my want of coherency in this long letter. It has been written by snatches, sometimes broken in upon by the business in Court. Should you consent to talk over these matters with me by pen and pencil, we may at least benefit ourselves and possibly be useful to others. I shall search for correct principles, for truth, and have full confidence that you will do the same.

Very respectfully,

ROSWELL MARSH.

Hon. CHAS. REEMELIN.

CINCINNATI, Nov. 27, 1860.

Hon. ROSWELL MARSH, *Steubenville, Ohio:*

Dear Sir: I have received and read with pleasure your esteemed favor of the 19th, though I see very plainly the quiet sarcasm with which you attack some of the main positions of my speech in your city, and I would have answered before this if a little debate with the *Commercial* had not kept me from it. I suppose you see this journal and you can there see how we meet and parry each other.

I agree with you that our General Government must not be judged by European political philosophy, and that their reasoning upon civil Government is seldom applicable to our Federal system, but I am somewhat puzzled to find *you* placing yourself upon the very ground which the public economists of Europe (I admit them to be some of the best of them,) occupy, to-wit: that humanitarianism and utilitarianism are to be our test of public measures. It is, as I conceive, impossible for you to be right in applying this Benthamian, (very good in its place) maxim to our Federal Government. Every reflection I have been able to give to the subject enforces the conviction that an extension of the powers of the General Government is the rock upon which our Federal system must, if ever, go to pieces.—"*Consolidation*," using Chief Justice Marshall's words, "*and not dissolution, is the point of danger.*" The only injury that can ever happen to us, as a people, must spring from an unauthorized exercise of power. I think our General Government too large now, even when confined within strict constitutional limits, but let your axiom "*to do all that may be useful and humanitarian*" be the rule, and all our freedom is gone; then extensions of constitutional powers will always be, as in the past, asked under the pretext to do us good, and then if we accede to it in one

instance, it is used as a precedent for further enlargements. There is no necessity for extending the uses of our Federal Government to all that is useful or humanitarian, because we have State and other local Governments through which to accomplish anything proper that may be desired. To be sure, I am, in our local government also, for the least possible exercise of power; but between the two I would always rather any given power were entrusted to the States than to the General Government, unless, indeed, it is in its character essentially a proper attribute of Federal authority, such as mints, etc.

I never favored the idea that the minority should *rule*, but I have insisted that the majority should rule only *within* the limits conceded by *all*, and to prevent an infringement of these limits, I am in favor of checks and balances through which minorities may, for the time being, arrest action but not *dictate* it. It is, besides, my deliberate judgment, that Governments should not be fastened too tightly upon the people; on the contrary, they should, like a well-fitting shoe, be easy to put on, hurt nowhere, fit all round, and yet easy to take off. Make our Government too rigid in its character, and, as I take the character of our people, they will, whenever driven to the wall, upset the Government rather than submit to oppression, or supposed oppressive laws.—You look to the strength of our Federal Government for its permanence, I to its weakness; and so true is this that if the fathers had made it a little stronger than it is, it would have snapped before this.

The supineness of our people in their primary capacity, the self-organized outside portion of our governmental system, *party tactics* and *party rule* is, you well point out, the source of all mischief that surrounds us, and the reason is that it is the only force of our republican machinery which is undefined and unlimited, except so far as parties check each other. Take that check away and parties always grow meaner. There (in our parties) we have not the republican virtue we boast of, nor that respect for the rights of all, without which all Governments are a mockery. I see no help for this except putting nominations within the control of law.

But if you mean to say that our people, whatever portion be in the majority, shall rule by power rather than authority, then I differ from you. Give me *firm* minorities and *persuasive* majorities. We Germans have a proverb: "Rigid masters never rule long," and I think its truth has become proverbial in America, too.

Upon slavery, I stand simply on the ground, 1st, that we, the people of the United States, had *no* power upon the subject before the Constitution was made; we could not then free the slaves of the other States; 2d, that the Constitution does not give us any power; and, 3d, that we can't get power, either by presumption or by buying territories with the common money or otherwise. We certainly do not get *more* authority by purchasing *more* land; and until the southern people, in due form, agree to give us the right to legislate, decide judicially, or to exercise executive power upon their right of property, we have not got it. That matter never was put into the common fundamental law except to the precise extent named, and we can't get it into the Constitution by *our* volition. Hence, slaves remain slaves until State sovereignty, by constitutional rule, for which the consent of all is presumed to exist, intervenes, and *there*, and not in our General Government, are the questions you raise to be discussed and settled.

Nor can I agree with you in your views on "sovereignty." The United States are a sovereignty towards foreign nations, so far as they represent in *one* legal person the sovereignty of all the States, but our Federal Government is not *our* (the States) sovereign; we, the States and the people thereof, are its sovereign. It has delegated powers, the States granted them, and it could not, nor does it, have them without the grant, as it cannot frame out to itself authority by its own will. An agent may represent a sovereign but is not sovereign in his own right.

The purchase of territory by Jefferson was as you represent, a transcension of Federal powers, and it is ever to be regretted that the then President, Jefferson, did not adhere to his original purpose and have the Constitution amended, because we, the children, have now to quarrel over a point then left open and now rendered complicated by the lapse of time. It shows, however, how, necessary an undeviating adhesion to States rights *strict* construction of the Constitution is, and how injurious every transgression of its plain provisions is.

I think I have answered every material point of your kind letter. Nothing would suit me better than a kind discussion with a gentleman of your experience, learning and legal acumen. I feel highly flattered

at receiving such an invitation from you, and if you will overlook the positiveness of youth as compared to your age, which I can't shake off entirely, the debate may be agreeable to you and profitable to me.

Allow me to thank you kindly for your kind notice of myself and speech, and believe me as ever, with deep respect and regard, Yours, truly,

CHAS. REEMELIN.

STEUBENVILLE, Dec. 5, 1860.

Dear Sir: Your favor of November 27th came duly to hand, and has been read and reread with much gratification on the whole. I could not but regret that you should think any part of my letter had a tincture of sarcasm. I assure you I wrote with no such feeling. Sarcasm forms no part of my character, and between earnest men, seeking for truth, it is, I think, not a legitimate mode of argument. There is, you are aware, in geometry a method of demonstrating the truth by stating a kindred proposition not correct, and following it to its legitimate conclusion in an absurdity. This method is, I think, perfectly legitimate in investigating the philosophy and structure of a government. A proposition as to the authority of a government, which, logically followed, ends in an absurdity, must be surrendered as unsound. The enunciator must, in candor, do this, unless he can point out some error or sophistry in the chain of argument whereby a false conclusion has been deduced from sound premises. One of the greatest masters of language of any age has truly said that to detect a sophism and to detect the double or equivocal meaning of a word or phrase, is in nine cases out of ten one and the same thing. So far I think we shall be agreed. I propose to be governed by sound rules, the above amongst others, in our inquiry, and to treat the subject in regular order *ab origine*.

I will, for the sake of simplifying the subject, begin with the condition of mankind before the origin of human laws by custom, contract, subjection, or by any other mode. Can we doubt that every human being came, and yet comes into the world, endowed by the laws of his Creator, the laws of nature, with equal rights; that the most important of these are inherent and inalienable—as life, liberty and the pursuit of happiness; that governments (legitimate governments, self-imposed restraints, authority, not power which comes from without) are instituted amongst men to secure these, deriving their just powers from the consent of the governed. There lies, in a nut-shell, the philosophy of our institutions.

I do not here include in any form the subject of slavery. That is a distinct subject, we may or may not investigate according to circumstances. Sacred writ has announced that God made man upright, but he has sought out many inventions. There can be, I think, no doubt that the earliest form of government amongst men was the patriarchal. In its origin it partook of the absolute and the reverential. It would be too long to trace its mutations, or in modern language, its progression, as the two elements, in the expansion of families, became antagonistic. Suffice it for the present purpose to say that they culminated in Europe at an early day in modern history in (with the exception of a few spots) the absolute supremacy of the philosophy that all power (the word had a potent meaning) was inherent in the hereditary chief of the tribe or people, no matter by what name or title the one or the other was called, and that whatever was conceded from him to those beneath him flowed from his free and unrecompensed bounty. Now, let us look at the antagonist principle: I do not doubt that it floated as a waif from an early period over the surface of modern Europe; but its first most imperfect germ unfolded itself in the Anglo-Saxon *Magna Charta* in the thirteenth century. It lived as feeble as a rushlight and threw its beams no farther until Milton lit his torch at its hallowed fires. His torch re-illumined the dark cave in which the reverence for rightful authority had been secluded for ages. By rightful authority I mean, in this connection, the reverence due to that wisdom and experience which seeks the best good of the body of the tribe, clan or people, as contrasted with the absolute power which seeks only the glory and prosperity of the individual ruler. The breaking down and disappearance of patriarchal genealogies left no hope of returning literally to patriarchal forms, but the spirit of patriarchal government consisted in the equality of natural rights. For the family or tribe (identical terms) had been substituted the people inhabiting a certain district of country.

Now, how stood the territory, portion of country, constituting the thirteen original States of this Union? The country had been discovered and was claimed for and on behalf, not of the people of England, but of the Crown or King of England, in whom not only the right of juris-

diction, but of property was and is, by the philosophy of the English Constitution (a sample of all European Governments,) lodged, and to whom it returns to be re-granted on certain contingencies. The King, not Parliament, granted the country in parcels to certain persons for considerations, and on conditions, granting rights of self-government within defined limits, reserving the appointment of executive and judicial magistrates and a veto on all active legislation by the colonial legislatures, to himself. The language of all these grants, as well as the diversities of their extent, prove that they were granted and accepted, not as a restoration to the people of a part of their inherent rights, but as voluntary grants flowing from the bounty of the Crown.

Difficulties arose. The people, while acknowledging the authority of the Crown and their allegiance to it, denied utterly the authority of Parliament, and complained that under bad advisers the authority of the Crown was abused to oppress the Colonists for the benefit of others. See the Madison papers, vol. 1, p. 13, for a succinct statement of the attitude assumed toward the King and Parliament.

The Thirteen Colonies, taking the name of States, thus separated from the parent stock, had a *tabula rasa* on which to found new institutions according to their own views of right. The Declaration of Independence foreshadowed the spirit, the philosophy, of those institutions; and in very few and rare instances are our organic or statutory volumes sullied by any sentiment not in accordance with it. Must not organic laws, founded in such a spirit, be intended to promote the prosperity and the happiness of the people in strong contrast to the advancement of the glory and renown of the ruler? You think, my friend, that I adopt the Benthamite philosophy. I have read a few exrracts from, and some criticisms on Bentham. His works I never read. If his theory of government be what I suppose it is, my ancestors put it in practical operation before Bentham wrote, if not before he was born. There is more reason to think he imbibed his ideas from their works.

I fear from your letter that in one matter I was not sufficiently explicit, though I intended to be carefully so. Our Constitutions confer delegated authority on selected agents for the public good. The Constitution limits and defines that authority, as I have said, for the protection of the individual against the action of the body. Now you will not go farther than I will in protesting against any department of the Government overstepping the limits assigned it in the Constitution, no matter how plausible or even how pressing the exigency. I trust we are agreed on that point. I know no man or party in the free States, except a few insane men who voted for Gerritt Smith, who hold any other doctrine. I know Southern demagogues, for the purpose of stirring up enmity between brethren, seek to confound the Republican party with the few Abolitionists, and in the same temper represent Hannibal Hamlin as a mulatto. They know the gross falsehood of the one just as well as they do the other. What I, in common with the Republicans universally, contend for, is that our institutions shall be administered in the same spirit in which they were founded; that is, for the public good, or, as you express it, the legislator, having the authority, shall determine the manner and the measure of its exercise from the humanitarian and the utilitarian standpoint. There can be no fundamental error underlying such a principle, however the legislator may err in his action upon it. I have not condensed as well as I thought I could, but I trust you and I will understand each other, and that no point of disagreement will be found to exist between us so far. I now approach a part of the subject upon which our views may at first be found diverse—I refer to the distribution of authority between the State and the general governments. In the diversity of views on that subject lies the whole source of our present difficulties, so far as men's minds are divided in good faith between the two. I throw out of view a little knot of men on both sides who are bent on mischief and are astute in seeking pretexts for accomplishing it. Neither you nor I would waste argument or remonstrance on them. I will only say to them—"*Sis sus, sis divus, sum Caltha et non tibi spiro.*"

I have extended this letter to an unreasonable length, and will conclude with the expression of my sincere respect and esteem.

ROSWELL MARSH.

HON. CHAS. REEMELIN.

P. S.—Having these copied detains them a day or two.

CINCINNATI, December 7, 1860.

HON. ROSWELL MARSH, *Steubenville, Ohio:*

Dear Sir:—Your kind letter of the 5th is before me and in reply thereto, I would most seriously impress upon you once more, that in discussing questions con-

nected with our General Government, we must, if we wish to avoid error, be unusually guarded in applying to it the usual legal argumentation. It is mainly to be judged by international law, for the sources of its authority are not to be sought in deductions from the law of nature, or the laws of government generally, or rules of propriety or necessity, but from the fundamental compact, the Constitution, its primary and final fountain of power. Strange as it may seem to you, yet it is true, that special pleading is far oftener the correct way of eliciting truth in matters of our General Government, than generalization. For instance, you set forth the general natural rights of man, and you intimate at least, if you do not assert it directly, that they are the basis of our Federal system; now nothing can be further from the truth, because, rightly viewed, the Constitution of the United States contains, in reference to such matters, only clauses prohibiting the General Government from impairing or interfering with these rights as they stand under State authority, in any manner. In no wise has that Government authority to determine by its will such matters; the fixing of their status being purposely left to the common or statute law of the local governments.

Again: You persist in pressing your idea, that the Federal Government was established to promote the public good and general welfare. Of course, that is its object, but only within its *limited* sphere, and only in pursuance of the powers and Government machinery granted to it by the Constitution. All despotisms were saddled upon mankind under the plea of the public good, and there is not now, nor has there been, a tyrant who does not barb his usurpations by some such pretence. Give to our General Government unlimited charge over the whole field of our public good and what may it not do? You disclaim any wish to see the Federal Government transcend its powers; but, my dear friend, do you not see that the issue between us, is whether the United States Government is one of *limited* authority, having none but granted powers, as I insist, or whether it may exercise unlimited authority, the public good being the only limit and fundamental reason of our confederation, as you contend; for if your construction of its sphere is right, it cannot transcend its powers, as they are as wide as general governmental authority. I say the public good was to a certain limited, very limited sense, the object of our General Government; and I contend that our fathers (if a German may say "*our*,") were particularly afraid of getting *too much* public good out of the Federal Government; they reserved a good deal of the task of creating public good to their own individual production and the care of their State governments. In fact, do you not think that the framers of our system had a shrewd *notion* that the best public good was that which the people worked out with their own heads and hands? Did they not fear that they were likely to get a spurious article from their General Government? In Europe, and Germany especially, the people feel what kind of public good people get through Governments, and it has become an acknowledged political axiom, that the only real progress made in political reform there and here, lies in withdrawing from governments some of the former cares for the public good. Take public charities as an instance: the public officer placed over them eats in his salary the bread of twenty paupers. It illustrates the point I am suggesting. I admit we must have some public charities, but insist that they should be so instituted as not to encourage their spread, as private charity is cheapest and best.

The foregoing remarks apply, also, to your proposed line of argument, to-wit: to run a thing into absurd conclusions, and thence demonstrate it untenable.—Many a policy may be absurd when carried to extremes, which moderately entertained and discriminatingly acted upon, is logically sound. We may carry our jealousy of government too far, and we may make its scope too indefinite, and the exact truth as to our Federal system, doubtless, is that the public welfare demanded the establishment of a General Government, but it demanded, too, that the compact should be made with a special care not to grant this Government too many powers, nor any without limit. I often think that its provisions should have been even more guarded than they are. Do not its few errors lie in occasional granting authority too vaguely? Would it not be a better Constitution if it had in its language been more circumspect still? Does a rigid and strict construction not make it safer to the States and the people? Have we ever had any difficulty where its language is beyond cavil? And have not and do not all our troubles come from sailing by slovenly reckonings? Hence I said in my speech in your city, that the first step in all argu-

ment on Federal affairs should be to ask: "*where is the power?*" (I should have used the word authority as corrected by you.) Now I understand you to argue, that we should first determine whether the proposed action is for the public good. There we differ; the difference is radical. I fear we shall never agree.

I must also interpose a few remarks upon your triumphant ejaculation, after quoting a portion of the Declaration of Independence, "there lies, in a nutshell, the philosophy of our institutions." I do not gainsay it, but would be pleased to have you point out to which of our institutions do you refer—the State or the Federal? Is the vindication of the inalienable rights of persons entrusted to the General Government? They are in a most limited sense, but in their full vigor to the State governments. The fugitive slave and other clauses in our United States Constitution prove that the rights of person were not within the law-making authority of our Federal Government, and only in a few points within its judicial powers, and then only where conflicts might arise between persons subject to different State jurisdictions, and that then they should be adjudicated according to State law. You see "the philosophy of our institutions" was not *all* put into the Federal Constitution, nor is all the public good to be ground out by the Federal hopper.

In most of your historic statements, upon the nature of government, we coincide; but you are certainly in error in attributing to *Magna Charta* the unfolding of the Anglo-Saxon idea of freedom and of reversing the previous rule of power. In the first place it applied only to persons *then free*. It says: "*nullus* LIBER *homo est*," (no free man); and as to *trials* and *peers*, it especially requires *equals* in these words, "*nisi per legale judicium parium suorum, vel per* LEGEM TERRÆ," (the law of the land), which in our case would mean State law. *Magna Charta* is, however, but one of many incidents in which mankind from necessity were compelled to recur to first principles, and it only proves that at that time such recurrence was necessary in the Kingdom of England. The German States and their people, including the Scandinavian, never gave up as much authority to their sovereigns as the English had done, and they had no need to reclaim it. The only people never consolidated into one strong central government were my native countrymen and the Scandinavians, and while they may have suffered some for want of national strength, they have escaped many aggressions on their liberties.

I agree to your proposition that the thirteen colonies had, after the revolution, or even after the Declaration of Independence, a "*tabula rasa*," on which they might have written new institutions according to their own sovereign pleasure; but I agree to it only as to the federal institutions. In the States (the successors of the colonies) rights of property existed presenting anything but a *tabula rasa*. Whence do our Eastern fellow-citizens get their land titles? I surmise that the royal prerogative, against which you aim so many arrows, has to stand as the strong, broad and main foundation for them! Besides, were there not personal relations then existing, and in no wise erased, which had a *black* coat over them, and which made them anything but a *carte blanche!* Those property rights stood then and stand now in the way of that "*normal* condition" of which the Chicago Platform speaks, being a fact. The truth is, the fathers let all things, most sensibly, alone, for which they found no *tabula rasa*, and they wrote no "*normal condition*" into the only *tabula rasa* they had—the Federal Constitution; a most wise policy, as under it alone the Constitution was a possibility. They strove for the attainable, and it they secured; had they attempted more they would have lost all; and as long as North America exists their course will remain the true one. Hence those only are wise patriots who watch and work, that the boundaries fixed by the fathers for the respective spheres of our States and our Federal Government be preserved, and who accordingly deny to the latter authority over rights of person and property, save their protection, when under its limited jurisdiction.

Bentham is a close reasoner, but an Englishman and full of Anglicisms, and hence apt to lead *us* astray whenever he argues from the stand-point of a Government endowed with legislative omnipotence. His essays I like to read, because he occasionally breaks through accepted notions, which I esteem of value to such readers as can form opinions of their own.

I do not charge upon the Republican party abolitionism, though I am aware that the latter is all the temper it has got. I charge upon it a desire to overslaugh the Constitution under a humanitarian ideal with which that instrument has nothing whatever to do. Nor do I participate in any slanders upon Senator Hamlin. I must however insist that the Republican party, and he with it, labors under a fundamental

error when it adopts, as a federal rule of action, axioms merely from utilitarian arguments, for to my mind nothing can, having reference to the General Government, be useful and humanitarian enough to authorize an infringement of the Constitution.

I regret as much as you do the irascible temper of our Southern statesmen and fellow-citizens, but remember their all is at stake; with us only an idea and a false one at that—anti-slavery; false I mean in bringing it into federal politics. That there should be men South who, provoked by our meddling with their institutions, should write equally false, or rather let me say, totally false ideas, is but an echo of our own wrong. Let us quit dragging into the federal political arena views about things which concern us not, and the South will cease regaling us with such stuff as you speak of.

I did not see the article you allude to in the *National Intelligencer*, and would doubtless, like you, have turned it over as sophistry.*

You are severe upon those of our fellow-citizens who are engaged in saving the Union, and you wish them in the hands of a South Carolina vigilance committee. a wish which shows how hard you can be. I have no wish in the premises, having no power to act. Neither the outgoing nor the incoming administration suit me. I fear the *milk* of the Union is badly spilled, for I see but little milk of human kindness left between the respective portions of the Union. As I never looked to force to keep it together, and as I perceive all hope of fraternal harmony dwindling more and more, I apprehend that *de facto* though not *de jure*, I am a citizen of only half a country, and as my allegiance to the whole still lives in spite of all efforts to sileace it, I must even sing:

"Life is but a moment,
Life is but a dream—
Men are the passengers,
They paddle down the stream."

Truly yours,

CHARLES REEMELIN.

P. S.—On re-reading the foregoing I see that I have used sarcasm, to which you have a right to object. I have not time to re-write the letter, please overlook them, and rest assured that nothing wrong is meant by them.

STEUBENVILLE, December 5, 1860.

*DEAR SIR:—I have been reading a series of letters in the *National Intelligencer* purporting to be addressed by a New England man, who has emigrated South, to a brother who remains in New England. The Editors vouch for him as a clergyman. The form, I presume, is his taste as a mode of getting before the public. To that I take no exceptions. I have naught to do but with his sentiments and his course of argument. Through a long, tortuous, wiredrawn chain of sophisms, he comes to the idea that all men are not born with equal rights, because he, in South Carolina, sees them in possession of very different amounts of rights, and he reminds his brother that even in New England one man will not associate with another on terms of equality. Is he a fool, or does he think you and I such fools that by his columns of sophistry he can bewilder us until we cannot discriminate between the laws of nature (God's law) and the artificial rules of society?

I would reply to him and try for once to be sarcastic, but if the *National Intelligencer* should publish it, the paper would be burned in South Carolina by the hands of the common hangman. There is certainly no equality in such a state of things. We read and consider what they say, but when we attempt to answer them, however candidly, our arguments are denounced as incendiary. An espionage which would disgrace the Austrian police prevents any man South, however intelligent, from reading the corrections of the monstrous fables they propagate against us. I hear that certain men are humbly inquiring of them how much of our rights we must give up to pacify them this time, and in response I see a South Carolina paper exultantly exclaims: "They waver—hit them again and they will yield." May any Republican member of Congress who falters fall into the hands of a South Carolina vigilance committee. Yours,

R. MARSH.

HON. C. REEMELIN.

STEUBENVILLE, Dec. 19, 1860.

Dear Sir: Yours of the 7th inst. is received. I begin to fear that instead of progressing orderly in our investigations, finding wherein we are agreed and then calmly examining the matters whereupon we dissent, we shall be wasting our time and labor in misunderstanding each other.

Now, my dear sir, in my last letter I said not one word on the General Government, except that I was now ready, in the close, to approach that subject. You reply as if I had treated that only. I stated the equality of the natural rights of men, because without it, when men come together to form the social compact, the community, when each must vest in the community by an organic law a part of his personal rights to form a new artificial person, strong enough to protect each in the enjoyment of the remainder, either he who possesses greater rights than another must give up more or they would not afterwards stand equal in the eye of the law. I am not speaking of communities formed by force, by conquest, but by voluntary association, as all our original colonies formed theirs. I used the phrase *tabula rasa*, in its connection with strict propriety, because their legislative department and its works was all their own and founded upon the principle of seeking their own happiness and prosperity. The executive and judicial departments were contaminated by the European system of government for the benefit of the ruler. The two were incongruous and the revolution

swept the foreign elements from the scene. They then had *tabula rasa* to found their institutions, their organic laws, upon uniform and consistent principles.

I can imagine but two objects in constituting a state, a government. One is the benefit of the people constituting it, the other is the benefit of the ruler. The first must in charity be presumed to be the object, when it is the work of the people themselves.

The conqueror who imposes his laws upon a conquered people, or the tyrant who has trampled the free constitution of his country under the hoofs of his horses, must be credulous indeed if he expects to be believed, however strong or frequent his professions may be. True it is the world has seen that a people may fail for want of skill to found a free government, or have failed for want of patriotism and virtue to perpetuate it. So under despotic forms a few rulers have had the wisdom to discover that their own and the people's interest was the same, and the virtue to pursue it. These rare anomalies drew from the poet the craven sentiment:

> "For forms of government let fools contest,
> That which is best administered, is best."

Such an idea might console for a moment a helpless people for the loss of their liberties, but would not meet your or my approbation as a guide in founding a State.

There was nothing invidious, my friend, in my speaking of *my* ancestors—I am not one of those who look sinisterly on those who come from other lands to cast in their lot with us. That I was born an American citizen was a circumstance for which my ancestors, not I, are entitled to all the credit. A foreigner who comes here to enjoy himself and to transmit to his proterity the benefit of our institutions, has far more merit in the matter than I can claim. But, says a new vamped and narrow-minded patriot, bad men come. Well. what then! Are there no bad men amongst the native-born? Why, does not your logic bring you to prohibit procreation to cure the evil? The logic is the same and the application fully as pertinent. The bitterest thing I ever said to a political adversary, and bitter enough it was, was to tell him, in a public meeting, that if he had been born under a despot he would have remained a contented and submissive slave. As the taunt was richly merited he did not perceive any sting in it. Excuse this episode. I hope with the above explanation you will see my last letter in its true meaning.

I will now take up the subject of the General Government and the authority conferred upon it by the Constitution.

The short-lived *confederation* of the States which preceded the present General Government, acted upon the States only, and through them upon the people. It contained in its Constitution the seeds of its own dissolution; it was formed by the States, and amounted to little more than a treaty. In one thing the result was different from the consequences of a treaty. The States, as separate States, were never known to foreign nations as sovereignties; their archives can show no appointments or receptions of foreign ministers or consuls. This is historical.

That the confederation fell to pieces and was about to expire in its own imbecility, having no coercive authority, read Mr. Madison's introduction to the debates in the convention which framed and submitted to *the people* of the United States the present Constitution. That Constitution when framed, was submitted, not to the State authorities, but to the people in their primary capacity in convention assembled, for approval or rejection. It was approved and adopted by the people of the United States in every quarter. What had the States to do with it? Their machinery was used as a convenient mode of assembling the people by their representatives for that special purpose.

The conventions once assembled, their State Constitutions interposed no valid obstacle to their action. Why not? Their commission was paramount to it—that was a very sufficient reason.

Now, whether the conventions be called conventions to amend their respective State Constitutions, or conventions to approve and adopt, or disapprove and reject the proposed Constitution of the United States, the effect is the same. All the conventions approved and adopted the Constitution. Some amendments were suggested and have since been adopted. Did that Constitution add to the aggregate of authority conferred by the people upon the Government? As I read it, very little, and that little applicable to the new relations arising out of the transaction itself. What then did it do? It simply took from the State governments certain portions of organic authority, and from the government of the confederation certain other portions of organic authority before vested in it; but which it was too powerless to exercise, and conferred them upon a new government over the whole nation, created for the express purpose of receiving and exercising them.

Now, my friend, I much fear, or rather hope, that I misunderstand you. You say, "rightly viewed, the Constitution of the United States contains only clauses forbidding the General Government,' &c. The language of forbidding or limiting is negative and would run: "Congress, the President, the judiciary, shall not," &c. Now, art. 1, sec. 8, of the Constitution of the United States begins: "The Congress shall have power,' &c. Would not a Constitution, clothed only in negative language be an absurdity, except it were based upon the principle or theory that authority had its origin, and was inherent in the Government, not in the people? Tested by that theory, may not the government do whatever is not expressly prohibited to it in the Constitution? I shudder at the idea of such an unlimited Government.

There are prohibitory clauses in the Constitution. They are of two kinds:—1st. Limiting grants of authority to Congress, made in general language. These have the effect of excepting certain matters which were embraced in the general language out of the grant. The 9th section of the 1st Article is devoted to that subject, and each clause is a limitation of some grant in the eighth section. Most of the amendments are additions to that 9th section.

The second class are prohibitions on the States. The 10th section, Art. 1, is devoted to this subject. The object was to prevent collisions by the exercise of concurrent authority. Hence, in many cases, the State and General governments are admitted to have concurrent authority, the States having before had it, and there being no prohibition on the States. although the authority is expressly granted to the General Government, but not an express exclusive authority.

Note the first section: "All legislative powers *herein granted*." "Herein granted" has great cogency.

There is another view of the forms of the grants not less important, and which, from want of due discrimination, has given rise to more legislative and judicial contention than any other. The 8th section grants to Congress power to accomplish certain specified objects. The section is silent as to the means by which those objects were to be accomplished until the last clause, with a single exception. The means of accomplishing the object specified in the 8th clause are pointed out, and the length of time is the only thing over which Congress has any discretion. The contests over the last clause have been almost infinite, and have divided legislators, executives, judges, lawyers, and through them the people, into two schools, the liberal and the strict constructionists. These two schools have long striven for supremacy in the Government, and it is a curious fact that in practice the measures requiring the most latitudinarian construction have been introduced and carried through by the strict constructionists. For example, under the power to regulate commerce with foreign States, the embargo in Mr. Jefferson's administration forbade all foreign commerce for years, and in effect all coasting trade also. Yet the strict constructionists sanctioned it, and long reflection on the subject has satisfied me that the decision was right. How would the same construction be received now as to commercial relations with a refractory State? I have never doubted that the Constitution was violated in the admission of Texas as a State by treaty. It was a palpable infringement by the President and Senate upon the jurisdiction of another department, and which was, from the nature of the subject, exclusive.

A great source of contention lies in confounding the objects to be accomplished and the means by which given objects are to be accomplished.

Mr. Madison, in the forty-fourth number of the *Federalist*, has treated the distinction with his usual lucidness. Few have ventured to assail his position in front.—Two modes of resistance to legislation to carry into effect the powers of the General Government have been used. One is to insist that the proposed legislation is not a means but the exercise of a primary power not granted. The other is to insist that the legislation proposed is unconstitutional because there are other means by which the object may be attained. By that logic if there were two ways of doing a thing, however strenuous the command to do it, and however urgent the necessity for doing it, must not Congress be suspended in a state of equilibrio? It seems strange that rational men will resort to such arguments, but there are volumes of them in print in our history.

The authority of the General Government in its intercourse with foreign States and outside of the Union, including its jurisdiction over the Territories of the United States, those held at the adoption of the Constitution and those acquired since, I will reserve for another letter. The origin, progress and spread of slavery, the sources from which the supply has been furnished,

and the various forms which the institution has assumed in different countries and at different times, form a very interesting subject of inquiry. I have given it no small share of attention in various aspects, and, if agreeable to you, shall be pleased to exchange views with you on the subject. I am no abolitionist, and look at it from the stand point of a social relation, and the policy or impolicy of its extension and introduction by the authority having control over it.

With much respect,

ROSWELL MARSH.

HON. C. REEMELIN.

CINCINNATI, December 27, 1860.

Hon. ROSWELL MARSH, *Steubenville, Ohio:*

Dear Sir: Your esteemed favor of the 19th should have been answered before this if Christmas had not intervened.

I desire most pointedly to stick to the line of discussion marked out by you, and you must not forget that I am but following *you* and am answering your positions. Our discussion arose out of my speech at your city, and in that I discussed the general principles of our Federal Government, and not of our State governments, nor of government generally. I had to presume, therefore, when you first wrote, that your remarks on questions of civil liberty had reference to our Federal Government, and were intended to lay the foundation for arguments applicable to it. For this reason I could not do otherwise than deny, most emphatically, that the people of the several States had any *tabula rasa* before them, when they fixed up their local affairs, after the revolution, and after the recognition of their several sovereignties by Great Britain; nor could I agree to your views, that there was then an unwritten page, only so far as the new general government was concerned, and as to it, not in that unlimited sense in which you seem to state it. This I now repeat and reaffirm, that rights of person and property were not then newly fixed, but left, with very few exceptions, as they found them; and moreover, that no power to establish or change those rights was given to the law-making power of the Union; that government resting in those matters on personal and property rights on the status then existing in the States. Do you gainsay this?

Hence I say: As to the governments then in existence, or the Federal Government then founded, the only unwritten page was that of the latter, and the territories; and even as to the United States Government and the territories, a few shadows of previous authority had, as it were, daguerreotyped themselves upon them, which could not in the nature of things be, and accordingly were not, erased. I mean by this, the fact that we had gone through a war with Great Britain, using a united government machinery; that we had an army and navy, a joint glorious history; had sovereign States, and in them relations of various kinds which had a lawful existence; that above all there existed a moral sense of duty to remain a united people, to work out as such a destiny of greatness, whence had grown the confederacy, and subsequently our present Federal Government.

Even so was it in our territories. English law gave them to the States as the legal sequence of the recognition of their several sovereignties and independencies, they being deemed the successors of royal prerogative in this matter, a very mean legal fiction, perhaps you will say, but one which was insisted upon by Connecticut, Virginia, and especially Massachusetts as to Maine, and New York as to Vermont, and other States as to wild lands. Thence arose a conflict, and from it cession of our territories to the Confederate, and also to the United States, and from, in *pursuance of and by right of cession*, the territorial organization. So, you see, here as elsewhere, as far as history informs us, there was no entire *free* page to start with; something always was and is precedent, and from precedent conditions spring new creations. The precedent must always be understood if we wish to understand the new. We may, for arguments sake, suppose that there has been a *tabula rasa* sometime, but we have no facts for it, ransack history as we may. I used to think Solon, Lycurgus, Moses and such great legislators, carved out new institutions upon stone tables, or wrote them on parchment; I have learned better, and now see that their wisdom consisted in shaping the old into new, into better, but still climatically, socially and historically harmonious forms, respecting, however, existing relations to a very great extent.

Dropping this point I admit that all governments, both State and National, should be instituted for the benefit of the people, and especially the protection of minorities; but I must again say that in my opinion the chief benefit the people will ever get from any government, consists not in what good *it* creates, but in what evil it prevents. *Government good* is always *left-handed*

good. Governments of large powers and of unlimited authority are always objects of fear, and the United States Congress, when it moved amendments to the United States Constitution, (the bill of rights) well stated the matter when it gave as a reason for circumscribing the powers of the Federal Government, the idea that so doing would "*extend the ground of public confidence*" of those subject to it. An unlimited government, even if nominally republican, is never safe for a people nor its rulers. I put this in so that it may, like a beacon light, keep us from falling into heresy by the wayside. Government is much more a question of quantity than quality, though the latter should always be looked to; and even the best government, if it governs or has to govern too much, is *dangerous* to liberty, to say the least. Liberty exists in fact only for and with virtuous men, and as governments do not and cannot create virtue they cannot create liberty. So too with prosperity. All we should aim at in government is to see that the happiness created by all and the wealth produced by industry be not wrongfully taken away. You see that in no case will I look upon government as the creator or originator of *rights* of person or things. It is and should be only its protector! That government is best which confines itself to this duty and does it well.

I know full well that you have no nativist feelings and did not mean to impute them to you. I have known you too long to even suspect that you are an American in any narrow sense. Would that all our fellow-citizens had as enlarged views as yourself.

I have not one word to say against your view as to the relation the United States Government bears for *all* the States towards foreign nations. *There* its sovereignty is clear, unquestioned and unquestionable, and this was true of the old Confederation and also of our present Federal Government. You err fundamentally, however, when you turn this State-conferred sovereignty towards the States and their people; and still greater is your error when you try to scratch the *States* and the people thereof, as *the* contracting parties, from the Constitution. I know ingenious arguments may be drawn from stray verbiage in the Constitution, but they are but ingenious. The States stand alive and kicking in broad daylight in all our history; *State delegates* sat in the convention that made our Federal Government; *States*, or rather their *people*, as *peoples* of States, ratified it; *nine States*, not a popular majority, were necessary to give it existence: States elect the President; States sit in the Senate, and only in another form in the *House*.

I concede that there is coercive authority in the Constitution, but not to the extent generally claimed; in fact, we have not in our governments, any where, that absolute, uncontrollable and irresistible *summum imperii*," which Blackstone attributes to the Government of Great Britain (King and Parliament as the *sovereignty* of England,) least of all is it in the General Government. I know very well that the present is a *more perfect* union than the old, but "more perfect" does not mean "absolute," nor "irrevocable," nor "perpetual."

You clearly misunderstand me when you quote a portion of my previous letter. I meant that as to certain fundamental rights of person and property, the United States Constitution contained only clauses forbidding federal interference. I referred to the bill of rights especially, and did not mean to deny that there are any affirmative powers in the Constitution; but, after carefully examining the article and section of the Constitution you point out, being the one having reference to the legislative authority of Congress, I again affirm, that in the powers there enumerated there is not a single authority for regulating rights of person and property. The distinction between the Federal and our State Constitutions is vital. In the latter we have *general* legislative authority, in that of our Federal Government only *special*, and it, moreover, expressly named as authority "*herein granted.*" Granted by whom? The States and the people thereof! And mark especially reserved to the powers granted! Besides, have we not an express reservation by which these powers may be annulled? You will see, therefore, that I meant to assert the very reverse from what you seem to infer. Not *all* not prohibited can the Government do. I assert the reverse of that: the United States Government can only do what it is authorized to do; a clause forbidding power never gives authority in that Government.

I had myself seen with regret the seeming and often real centralism and federalism in the action of some of our so called Democrats or States Rights men, and as you will bear me testimony, I have never faltered in bearing testimony against my party in this and other matters, where there was evidence of a departure from its principles and rules. I know and feel this the more, as evils will flow from this to our common country which I shudder to think

of. It is a humiliating, but wholesome confession, which is due to the living and the dead, that in Church and State high principles are but too often merely the ladder to power. Government is centralised power—its acts are always centralization in degree, and the strictest constructionist, when clothed in authority, will, under stress of circumstances, construe himself (far too often for the public weal) into the force he believes necessary. He is surrounded by men who want the force or power for selfish ends, and they applaud the exercise of authority pleasing to them and then abuse the precedent set. All things have their parasites, the Democratic party, too—and new as your party is, it is not without them. You will find the same inconsistency in religion and its churches. The severe ascetics create, in spite of themselves almost, precedents for the most extensive clerical powers. So, too, in military matters, the danger of war in Republics lies in the fact, that its paraphernalia loom over into civil life, and are never entirely put away after the war is over.—Jackson exercised powers in his contest with the United States Bank, which finally ruined the Democratic party; I refer specially to official patronage.

And yet, is it not true, that in Church and State, we must anchor in the strictest standard rules and axioms, or all abstract truth would be swallowed up in hasty practice. Christ would be as much astonished at the church rulings of his prelates, as Jefferson, Calhoun and Jackson would be at the precedents now grown out of some of their acts. Exercising authority is for far too many too severe a test of their principles; it brings doctrines square home to practice, and then they fail in the hour of trial; but all this conveys to me only the lesson, to watch my party as well as my government, for both, as a modern author says, will always be as bad as we let them be. In no case should such facts be used as an argument against *the* principles we deem right. We must still cling to the axiom, that it is unsafe to let government go ahead without restraint, and Christ's humble doctrines are still right, even if his churches are proud. *Brakes* are useful in machinery, but brakes must be brakes, not *stops*. Strict principles are the brakes on government—as such they are ever useful. The rule is well understood in locomotives. We propel by steam and run with brakes for safety. Take the latter away and every railroad train is in constant danger. So in government, we must have power, but we need, too, the vigilance of the man of strict principle, not in office so much as in the tribune, to warn of danger ahead.

I would like to elaborate this idea, but have not the time. Too great elaboration I deem, however, hardly justifiable between us. Our letters will be worth to us more if we do not expatiate every idea too much. I am very busy any way just now, and must ask your indulgence. I wish you a happy New Year, and to us both a re-cemented Union, and an unimpaired Constitution. Yours truly,

CHAS. REEMELIN.

STEUBENVILLE, Jan. 9, 1861.

Dear Sir: Your favor of December 27th came to hand yesterday. I thought I had been careful in explaining what I intended by a *tabula rasa*. The personal rights of each individual are inherent. He has them in a state of nature, and those of each individual are equal whether his physical organization be strong or weak, and each one, by a law of the same nature, is bound to respect the rights of others as he claims respect for his own from others. I surely did not say, nor mean, that these were swept off that the board might be clean to construct them anew. No community, however, or by whoever formed, could confer these except under peculiar circumstances, and then only as a restoration.

The misfortune was, that in a state of nature the strong from the viciousness of man's nature would not respect the rights of the weak. Adam and Eve had early and sad proof of it.

The origin of government was doubtless a means adopted for the purpose of combining the strength of all to protect each against the vices of individuals. Can there be a doubt that those vicious individuals were within the community thus associated for common defense, and that protection against internal preceded protection against external violence?

In communities there are, as you are aware, two classes of rules or laws totally distinct from, but consistent with each other; the civil and political, loosely and indiscriminately spoken of as common or civil law or rights, and political law or rights. If I understand you, you seem to think what falls under the first head was originally imposed on the Colonies by foreign domination, and that they did not, at the revolution, disencumber themselves from it. I do not so read the history of my country. The first colonists had, as I have before said, the sole power of legis-

lation, subject to a veto in the Crown, a negative power only, which could originate no laws, but which, when the loyalty or carelessness of a Colonial Legislature, had given the Crown an injurious advantage, enabled the Crown to maintain it.—The judges appointed by the Crown became astute in defeating by construction the plain intentions of the legislator, and not unfrequently pronounced them encroachments on the royal prerogative.

The Governor, the vice-royal representative of the Crown, had certain powers which he abused to dragoon legislatures into the royal views. These branches of government originating from and controled by foreign power and exercised for the benefit, not of the people but the ruler, were what the revolution swept away, and left in their place, I again repeat, a *tabula rasa* to be filled by the people as they saw fit. They did fill it promptly in every case, assuming the titles of States, renouncing that of Colonies; and so unpopular was the name that the term territory, from the French word *territoire*, was substituted as the designation of our dependencies. Now let us understand each other. I do not assert, and have not asserted, that *our* ancestors (there is a good sense in which they are your ancestors as well as mine) had an entire *tabula rasa*, a recurrence to a state of nature on which to found new institutions, but only as to such parts as being founded by foreign power and exercised for foreign benefit, were swept away by the revolution.—These included no part of the laws by which the civil rights of the people were defined or protected, because no part of them existed by force of foreign enactment, but by adoption of known systems with such modifications assumed to each legislative body best adopted to the new condition of things. In some colonies the custom of Kent as to descents had been adopted. In others the law of primogeniture became the rule. These are only cited as examples.

You are no doubt right, so far as we at this distauce of time and events can judge, in your better considered opinion as to Solon, Lycurgus and many other reformers. They did not found *ab origine*, they only remoddled. I would give much to know what were the materials they remoulded. Every revolution sweeps away what is obsolete or unpopular, and creates, to that extent, a *tabula rasa* to be left so, or to be filled as the people may see fit.—Every *revolution*, my dear sir, leaves more or less *tabulas rasas*, according to the violence of the change, to be filled up. Happy the people who have been as wakeful in guarding their rights as our ancestors were. I have not spoken of after the revolution accomplished by the acknowledgment of our independence. Our ancestors never endured a state of anarchy, or the same thing, a state of nature, in any respect longer than they did a state of sleep.

Probably the nearest approach to a complete *tabula rasa* since the days of Peleg when the earth was divided, will be found at the introduction of the feudal system on the ruins of the Roman Empire by the Northern invaders. Here, again, I would give a finger to know what was the polity of those tribes in their native forests. In adapting themselves to their new condition they certainly proceeded on the principle that all property was in the head of the tribe, and all service was due to him, and in return the duty of providing for all devolved upon him. The historian and the lawyer can equally trace by parallel lines the present relations between sovereign and subject even in England, the last to adopt and the first to modify it, to that source. To this day when a subject is attainted of treason or dies without heirs, the estate returns by the strictest rules as a reversionary estate, not into the national treasury, but to the private domain of the Monarch. It was upon the same ground that the King granted out these broad countries as his private patrimony, not as you seem to suppose (a very mean legal fiction); at all events the substance dwelt in the form. Henry VIII. seized all the estates of the monasteries and nunneries on the same claim, because they denied the feudal dues conditions of the original grants, and the nation never received and never claimed a dime from any of the immense wealth derived from these sources. I like to revert to these things. They place in strong contrast the simple and equal purpose of our free institutions where the Constisutions, State and National, each in its sphere, and the laws passed in pursuance of them, alone govern, and every man stands equal before them.

It is undoubtedly true, and I have not intentionally said a word to the contrary, that as governments were originally instituted amongst men to protect by the common strength the weak against the strong, so still the repression of evil is of paramount importance in the action of all *legitimate authority* to any positive good the public agents may promise themselves they can accomplish.

Evil may and does present itself in many

different forms, and may we not by a slight change of position be brought to see that the action of the national authority, has, viewed from one stand-point, prevented a great evil; and viewed from another, the same movement has accomplished a great good. Take the impending question as an example. When an energetic action on the part of the government has restored order and obedience to the laws, one draws a long breath and says, "Thank God, a terrible calamity is averted." Another more buoyant by nature, exclaims "the Union is safe;" "a great good is achieved." Now are not both right.

You admit the unity of the General Government in its relation to foreign nations, but deny it as to its internal relations to the States and the people of the States. I claim that within the sphere prescribed to it by the Constitution of the United States in the enactment and enforcement of laws in pursuance thereof, the authority of the General Government is mandatory; it is a law prescribed by a superior and which the inferior is *bound to obey*, and that there is no superior or equal within the limits of the United States, whether an individual or a State, with right, power or authority to arrest its operation. Do you hold that there is? If so, what do you do with the second clause of the sixth article of the Constitution of the United States? You concede coercive authority, but not to the extent generally claimed. Where do you find a limitation to that authority? The authority to punish treason must surely include authority to suppress that treason, and the force can only be graduated by the strength of the treasonable force.

Again: Are those entrusted with the administration of the government invested with a discretion to sustain the government or abandon it to traitors, as they please? See the President's oath of office and his constitutional duties (not rights) in the Second Article.

The law of a State, by her Legislature, or by a convention, commanding the Governor to commit treason against the United States, would be no more a protection than if it was resolved by a gathering in a market-house. Do you hold, as a lawyer, that it would, or, as a citizen, that it ought to be?

States are recognized and in a subordinate sphere retained, in the Constitution of the United States. By our new State Constitution counties are recognized and have certain parts assigned them in the machinery of government; the convention was elected by county organizations, its doings were ratified by the same forms. Did the counties make the Constitution? Can Hamilton county, therefore, when outvoted or overruled in a favorite piece of legislation, step out and set up for herself? The analogy is not perfect in all respects, but in this point it is perfect.

There were good reasons why the citizens of each State should decide for themselves, whether or not they would become a part of the new nation, and also why the experiment should not be made with a less body than the union of nine States into one would make.

But suppose, *pro arguendo*, the States formed the Union, and therefore, by some logic unknown to me, any one of them can dissolve it. Now, again, by the same logic, if the people formed it cannot any one of them dissolve it?

I have not understood you as distinctly asserting the sequence that a State can, at pleasure, retire from the Union because the States formed it, but without it I see no practical importance in the question as yet presented—I can suppose cases. A citizen of Connecticut is indicted for treason against the United States, he pleads that the Constitution of Connecticut did not authorize the State to bind his allegiance to another nation. There is special pleading for you. Will you demur or take issue?

Truly yours,

R. MARSH.

HON. C. REEMELIN.

CINCINNATI, January 23, 1861.

HON. R. E. MARSH, *Steubenville, Ohio.*

Dear Sir: In reply to yours of the 9th, I have no objection to have it understood that I agree to your views upon personal rights, and that I hold them generally correct when applied to our States, if you would only always keep in mind the main point of my argument, to wit: the fact that our General Government has very little indeed, and should have still less, to do with questions concerning them, and that this business should be strictly confined to protecting the person or owner, as the case may be, as far as set forth in the Constitution, in that legal status in which our Federal Government finds him or them according to State law. Thus stated and accepted by you, we may conclude this part of our controversy.

I am also quite agreed to admit that the people of the States did, by the revolution, sweep away *royal* power and much of its law, so far as it related to royalty specially; but I ask you also to admit that the colo-

nial law generally, and the then existing titles of real estate, owned by *private persons*, whose sources were and are royal grants, remained intact. Furthermore, it is necessary to a clear conception of the question to add that the royal power and titles, not yet passed to private persons, over land and subjects generally, passed to the States and their people, and from them by special compact to the Federal Government. Yea, more, it is true that the very legal fictions of the previous British and colonial law passed over with the titles and have force to-day. I insist also that the relations of persons, outside of their relations to the King, remained unaltered —and I here refer more especially to that old rule that a negro, once a slave, does not become free except by manumission or due course of *statute* law. Not a single negro exists now in our States who is rightfully free by the process and reasoning spoken of in the Chicago Platform, unless such negro was unlawfully imported or was an immigrant into the free States *from* countries without slavery. On the other hand, all white men are free and are ever pronounced to be so. This was the law and the rule in the colonies, it is the law and the rule to-day.

Now, to illuminate this subject in all its bearings, I must again add that such is not the law of Germany, England and France, for *there* all persons, black and white, are free, personally, but not politically, as we understand it. But why is the law such in the countries named? Why not with us? Simply because personal freedom has been established for *all there* and not here. Go to Russia and the law is as with us and perhaps worse. And in this distinction lies the main error in your party. You forget that the object of the Constitution of the United States, and especially of its bill of rights, is to "*secure*" existing and not create new civil liberty, and to secure this existing freedom *first*, against foreign powers; but *secondly*, and most significantly, also, against the usurpations of the very Federal Government made by the Constitution.

Sparta, Athens, Judea, Etruria, Rome, Carthage, Lusitania, Germania, were all *free* countries, for they had national independence and free civil institutions, yet all had slaves, and I cannot yield your idea that a country cannot be republican or free wherein there are slaves. I feel somewhat tempted to enlarge upon this topic and to write you an essay on Moses, and Solon, and Plato, etc.; also to give you some facts about my primevally *free* countrymen in the forests of my native land at the time of Cæsar and then of Charlemagne. I have lately had occasion to read, in our evening task, to my son, the facts in reference to those days, but what would it avail us? The fact would simply become plainer that there may be very free and very good people alongside of slaves—yes, and very mean ones, too.

For us *the* point is, that the people of our States when they united for a common government, did just as they did, that is to say, they reformed as far as existing rights and wrongs would let them, and of course they abolished monarchy, but they left the balance to the States and a certain specifically named portion to the General Government. They, in their generation, did a work of reform for which we should feel grateful, but they declined to reform too much, and it also deserves our gratitude. Mankind calls their time an "*Era*," but it is a mistake to deem it a *tabula rasa* on which to write entirely *new* institutions.

No two periods of the world's history are alike, but from all we may learn the lesson I have set forth. In our country the revolution swept off British power and some false colonial law, but it left the footprints of the rights and wrongs of much of both. They are imbedded in our system, and of these British land titles and negro slavery are the most prominent. As to the latter, its abolition was left to the due process of State law, and in *nowise* was it made the duty or is it the right of the Federal Government to see that the so-called natural law or normal condition should retake effect. The same is true as to all other matters which rest not on grants of governments but exist *per se*.

I have never denied that the public good should be the guiding star of public affairs, I have only gainsaid that proving a thing to be useful proves it constitutional, or demonstrating a thing to be morally or religiousiy right brings it *eo ipse* within the rule of the Federal Government. Hence you may consider everything right and useful as acceded to by me, *after* you shall have proven it constitutional.

I repeat, the Government of the United States is not a sovereignty *per se*; it has, as a Federal Government, no inherent authority. Whatever powers it has is granted authority and it may be taken away. None can add to its authority except the States that gave those originally granted. To hold otherwise is to subvert our whole Government.

I know full well that ever recurring conflict between "*authority*" in power

and the "*reason*" for its existence. The first must claim its supremacy. This is well in the ordinary course of legal adjudication or argument, but when the creators of authority, the principal in our government, the States and their people, claim to act for themselves, through themselves, and by themselves, the agent (our General Government) cannot plead this *granted* supremacy. It pales as the light of the moon does before the light of the sun.

Treason by a State! Treason and capital punishment in a situation of things when you must either hang all or forgive all! How strange the idea, when viewed by the light of your reasoning about the revolution of the Colonies and the acts of the British Crown. It does almost look as if we were about to borrow, for revival among us, not only the treason rulings of old England, but those also of the Bourbons of France, and in addition thereunto the fanatic cruelty of the French republicans of 1791-'2. I wish I had time to go into this subject at large, and to show how America has abolished the old royal allegiance ideas entirely; but I write amidst the pressure of business, and hence cannot explain as fully my views upon this and other subjects treated by you in your letter, as I wish.

I can only refer now to two matters more, spoken of in your last. Are you really serious in your argumentation about the words in the Constitution: "We, the people of the United States?" Do you, indeed, hold it to be a mere name? Do you deny that it is a description of an actual occurrence? Crown lawyers, when pushed for authority, may use such argumentation but I hardly think you intend to. I await your further reply.

Secession, for *cause*, sanctioned by the people in the highest form known to our law, is one thing; sedition and insurrection another. The first was the process of our revolution, and subsequently of the framers of the present Constitution of the United States; *it is the American mode of doing such things.* That right always existed, it exists now; it never was and it never should be given up. Insurrection is a totally different thing; it is especially named and defined in the Constitution and its suppression authorized and regulated.

I assert, most unequivocally, that the States and allegiance to them preceded that to the General Government, is before it, and survives it, and the Federal Government may well be said to owe allegiance to the States and their people.

It is of the utmost importance that in this matter of "*secession*" we use words with a fair understanding of their relation to the subject before us, and with due caution, so as we do not employ terms descriptive of wrongs and crimes, such as unwelcome secession brings to exasperated minds. We must ever distinctly comprehend that the relation of our States and their people is not that of a subject to a king, nor that of a citizen to a sovereign. Secession is not rebellion, nor as already stated, an insurrection, nor sedition, nor a conspiracy, nor even necessarily a revolution; neither is it nullification. It is *secession*, and I know of but two parallel cases in European history—the secession of Switzerland from the German Empire, and of Sweden from Denmark.—Now, in my opinion, it was not treason to sever Switzerland from Germany, nor to dissolve the Calmaric Union, and the evil doers, in both cases, were the rulers who forced secession upon States and their people, devoted to the very Union they separated from. Such is the historic judgment against the German Emperor, Albrecht I., and the Danish King, Christian II. For five hundred years William Tell lives in the memory of the people; for three hundred Gustave Wasa. These cases are given, not because they are like ours, for in each of these cases the secession was from a potentate as well as from a union, but because they are similar and aid us in bringing our mind away from mere revolts, up to the real question before us.

Thus understanding ourselves, we may comprehend that, as in things generally, so there may be a right way of secession and a wrong way, a distinction we may as well extend to the preliminary steps. The right way is that pursued by the originators of our United States Constitution, the wrong way, that by force before peaceable remedies are exhausted. So in the preliminary steps. Virginia and Kentucky took the right direction in 1797-8; South Carolina imitated the wrong way in 1832, and does so now.

Next to distinguishing correctly between the right and the wrong of secession, is the understanding that there may be a proper and an improper mode of meeting the question by the Federal Government. That Government is bound to hear and consider the representatives of States and their people, and it has no right whatever to oppose efforts towards a settlement of difficulties which have grown up between these States and their people. On the

contrary, it is bound to do all in its power to bring the original parties to the Union, into such a train of considerate action as may enable them to heal controversies by the assemblage of deliberative bodies, composed of delegates of States, with full and sovereign powers. It must frequently happen in federal governments that the Constitution does not cover the existing dispute, and in all such cases it is wise as well as lawful, to bring the States into action as the original parties to the the Union. Thus the Congress of 1786-7 acted, and thus should the present act.—War upon States asking guarantees for their rights would be a crime to-day as it was in 1308 by Germany upon Switzerland, and in 1520 by Denmark upon Sweden.

The words treason, disloyalty, and such like, when applied to secession are, therefore, with us, misnomers. These terms are often proper from a king to a subject, but not from a Federal Government to the States and people composing it. A parent may call his son disobedient, but if one partner were to speak thus of his fellow partner we would all laugh at him.

You will, of course, now ask me what wrong or crime *secession* is? I answer: Secession, *wrongly sought*, is a breach of solemn compact between States; a breach as much more heinous than the breach of a common contract, just as a violation of the marriage covenant is far more reprehensible than that of a common relation of life. The magnitude of the interests involved, was recognized in the solemn manner in which the Constitution was made, and they have surely not diminished; on the contrary, they have become momentous, and the man or State, or Federal Government, that will lightly approach the consideration of a state of things indicating a possibility of a severance of our Union, is madman enough to play with locofoco matches in a powder magazine, or mean enough to divorce himself from the mother of his children because she failed to cook him a good supper. Our Union is, let us ever remember it, not a common partnership, nor a mere treaty between sovereign States, neither is it a civil government like England or France. It is a "*States Union*" and not a "*Union State*." It is more than a league, more, for instance, than the Ionic Union of Greece, more than the present German Union, but less than the old Germanic Empire, and an entirely different thing from the union of Ireland, Scotland and England.

A most essential characteristic of our States Union is the clear correlative obligations of the States to the Union and the Union to the States, and again those of the States as sovereigns to each other; and it is a most mischievous mistake to hold the Federal Government as the arbiter in settling the latter, or as the agent to redress their complaints of each other. That error, of all things, is not in the Constitution; it comes to us by false construction. South Carolina has ruptured these relations ruthlessly, while the course of the fathers recognized and established them.

You perceive that I do not regard our Federal Government as the aggrieved party in a secession movement, no more than I would the *employees* of a partnership in an attempted dissolution thereof. The States and their people are the original parties to the Constitution and the Union formed by it; they are its *subject* and *object*, and false secession ruptures the rights of States and people. *They* are aggrieved, *theirs* is the right and power of seeking redress.

Sending Commissioners to James Buchanan, or any other President of the United States, to treat on Secession, is a great wrong to the States composing this Union, for it is surrendering their sovereignty in a most essential point; but it is equally offensive for the General Government to take into its hands the redress of the wrongs of secession. Both the States proposing to secede and the Federal Government should call upon the States to deliberate upon a separation, if that shall finally be deemed best, or better to determine the conditions of a prolonged better Union.—The Southern States violate the Constitution in forming a new confederacy, and they are placing themselves in a position which self-respect and high duty forbids the recognition of, however willing we may and should be, to recognise the original sovereignty of the States and their people, and however desirous it may be to meet them as sovereigns for consultation, deliberation and final action. Thus by a double error we are drifting away from the true way, which is to call the States together in their sovereign character in an assembly like that which made our Constitution, and not one like the proposed Peace Convention at Washington. The South has failed to do this, because its object is, I fear, dissolution, and the North avoids it because, I surmise, it is actuated by hatred. The leaders in both sections are not true Union men.

I would be doing my holiest feelings injustice, if I were to omit to say, that seces-

sion, whose object is dissolution and not reconstruction, is, in my opinion, a wrong, outside of the Constitution, for I hold it the moral duty of every true-hearted American to labor for union; not a union of sand, nor of petrified rock, but a Union of States, affectionately recognizing that they belong together, an eternal covenant of internal peace, and a combination for strength with a free development of all the States; a union bound together by ties stronger than force and better than compulsion.

The foregoing will explain to you why I recognize the right of secession, when sought properly, and why I am against it when pursued improperly. It will also indicate to you why I am against the use of force by the Federal Government in such cases. I am in the condition of the partner who is angry at his partner for wanting to secede, but who is equally displeased at the clerk, who puts his nose into the disputes between partners, thereby aggravating our feelings and doing more than all else to dissolve our union. I want a meeting of *the* parties to the Union, and I want to exclude the meddlesome federal officials as well as the disunionists *per se*.

There may be an argument drawn from the oath we have to take, that we adopted citizens owe original allegiance to the Government of the United States and secondarily to our respective States. Such a ground would be casuistry, and yet I am in no wise disposed to belittle my sworn allegiance to the United States and to the State of Ohio, for I cling to the Union as a whole, and I abhor the idea that I am likely to be made, by the act of others, a citizen of half a country or no United States citizen at all. The history of my native land is ever in my mind, and it is a deep sorrow to me to see in the events before me the proof, that our people here are just as foolish and fanatical as the German people were after the reformation and before the thirty years' war. How distressing the reflection, that we, who emigrated from Fatherland, should have gone to a country where, if there be union, there shall be, like in the country we left, created a deep-seated cause of disunion, that cause being an unwillingness by the people of the several States to understand and respect each other's domestic institutions and peculiarities. That understanding and that respect is the first condition of Union, and woe unto him who first invited any of us to meddle with those peculiarities by dragging them into federal politics.

I remain as ever, most respectfully yours, with my best wishes and affections for a preserved Union.

CHAS. REEMELIN.

STEUBENVILLE, Jan. 31, 1861.

Dear Sir: Yours of the 23d inst. came duly to hand. There are some parts of our subject which I think we have sufficiently examined. I am a little at loss to understand by what line you discriminate between personal freedom and civil freedom. If you understand by personal and civil what I define by civil and political, we need not differ about mere terms as signs of ideas. You will recollect that I have said, no government could confer personal rights, in which I include in the broad and full sense of the phrase, the rights to life, limb, reputation and pursuit of happiness, which last surely includes the right to acquire, possess and enjoy property, with all the attendant rights, except as a restoration. The reason is obvious. They are originally God given, not man given. They must have been taken away justly or unjustly, but in either case by man, before man can confer them, and then, you see, it could only be a restoration. The convict in the penitentiary, who, justly convicted of crime, whether against the State or the United States, is justly deprived, according to the character of his crime, and if a murderer, of all, by one irreversible blow. When discharged from the penitentiary, having paid the penalty awarded to his crime, would it not be a strange perversion of language to say that his personal or rather his civil rights were bestowed upon him by the law as an original grant? It seems so to me. He is restored to what of civil rights he had before, nor more nor less, and has them by the old tenure. He need plead no law but God's law for exercising them. Not so as to political rights, which are sometimes taken away as a part of the penalty for crime. As they have their origin in, and result from society, so when once taken away by law, the law of society must be produced to show a new grant.

You err, my friend, in supposing the legal fiction, as you term it, (I repeat it is no fiction but reality,) is the same in this country as it was under the British King. It is entirely changed. I have sought in vain, such is the want of comprehensiveness in our early historians, to find what was the law of escheats and forfeitures in our colonial days. Did they go to the Crown or the Colony? In the absence of positive testimony I think they went to the Crown. If so, all was changed by the

first blow of the revolution. Escheats and the forfeitures of the tories, estates went not to the Executives but into the State Treasuries. You think the laws respecting titles to real estate were and are unchanged. If you mean that our ancestors did not abolish titles derived from the Crown as their origin, I have said early that our ancestors never inaugurated anarchy, chaos, agrarian law, or by whatever name confusion worse confounded may be characterized.

They were a calm, thinking, considerate people. They took an observation of their position, not perhaps always very scientifically, and moved practically rather than theoretically. For the precedents of kings they had far less reverence than some of their posterity have in these days. In one case, where I trace my lineal ancestors, they solemnly determined in popular, not in representative council, that they would be governed by the laws of God, as found in the sacred scriptures, until they had time to make better, which, as I read it, meant more appropriate to their condition.

The title to real estate in every State in the Union, except Louisiana, is controlled by statutes, as to all the three modes of passing title by contract, by devise and descent. In no case can the common law be cited to sustain a title to land. In Louisiana the civil law prevails. Of their statutes I am not advised.

I intended to devote this letter to your idea that the United States is not a sovereignty. It will be well, before we definitively affirm or deny that the United States is a sovereignty, that we understand and settle between us what each means by a sovereignty, lest, when we have long argued, we find that we have been talking about two different things, or, what would equally embarrass us, only about two names, like the nominalists of the old divinity schools of the middle ages, from both which, good Lord, deliver me.

By a sovereignty I do not mean a despotism. I pray you do not imagine that I confound them.

There is not in my thought any necessary connection between them. True, a despotism may be and usually is a sovereignty. A limited monarchy may be, and usually is, a sovereignty. A Republic, however free, and however limited the authority of those who administer its affairs over its own citizens, if they represent the nation, the Republic, in its intercourse with foreign nations on an equality with other independent nations, and it it owes no subordination to any other nation, is, in my view, not only nominally, but substantially, a sovereignty.—Now, how stands the United States in these respects? Do not the United States declare war and make peace? Can a State do it? I am speaking under the Constitution. Do not the United States rightfully raise armies, build and equip navies? Have the States authority to do so? Have not the United States authority to admit and naturalize foreigners, or to refuse them such privileges as it may deem most advantageous to the nation? Can the States do it or object? Foreign nations have sometimes attemptod resistance to our policy in drawing away their subjects. I imagine the Emperor of Austria, despot and sovereign as he is, will not soon forget the contemptuous sneer with which Webster replied to some arrogant language, that the dominions of the house of Hapsburgh were not more to the United States than a patch on a man's elbow. I should like to hear of the ruler on this ball who would dare deny the Ambassador of the United States what diplomacy demands for the minister of a sovereignty. We should soon learn whether there are in this country any who would contend that this nation did not hold as high a place amongst the nations of the earth as the Autocrat of the Russias, or even the Brother of the Sun and Moon. Cannot the United States as a sovereignty when at war conquer foreign territories, or even nations, and rule them as tributaries and conquered provinces or compel their cession by treaty with as ample authority under the law of nations as France, England or any other nation can do? To turn to the interior, the domestic authority — What attribute of sovereignty has been withheld by the Constitution from the United States? Read Sections 8 and 10, Art. 1, and tell me what distinctive attribute of a sovereignty has been withheld from the United States or left in the hands of the States? Then read Article 6 and tell me how the officers or citizens of a State can evade it. If they have taken an oath to obey the Constitution of the United States what do they do with it? If not they are not legally qualified as such officers and are no better than any other unauthorized collection of gentlemen. Sovereignty is not an inherent power—never was and never will be. It is granted or seized by force or fraud. Is it any less sovereign when granted by those entitled to grant it, to be exercised for their defence, use and benefit, or any less enti titled to command the reverence, respect and obedience of the citizens, than when it

is forced upon a reluctant people by violence or saddled upon them by the seductive arts of treacherous demagogues. If so there is an inherent weakness in the very principle of free institutions, never before pointed out, which renders them impracticable, viz: that obedience is not due to constitutions formed by the people themselves, because so formed. Treason by a State, you exclaim. The law prescribes hanging for treason—perjury is always involved in the crime. A State has no body to be hanged nor soul to be damned. A Governor of a State has both and commits treason against the United States in his individual private capacity as a citizen of the United States, not *ex officio*, nor as a citizen of a State. Did not every citizen of the United States resident in South Carolina, who joins in this enterprise, determine to commit treason against the United States before they met together to consult how they could most safely do it? The Constitution has defined in unmistakable language what shall constitute the crime of treason against the United States, and you mistake not only myself individually, which would never give me a moment's concern, but the free States' population, when you suppose they would extend the plain language of the Constitution, by implication or construction, to embrace any one who is not strictly within its letter. But let no enemy lay the flattering unction to his consciously guilty conscience that he can obtain so narrow and perverted a construction that a State law shall turn aside the sharp sword of justice from even the highest dignities of a State. Indeed I think the man who by the influence of his local position has the art to seduce thousands of his confiding fellow citizens into crime is a most fitting subject to be made an example. The unfaltering fall of punishment on one such would do more to correct public feeling and curb the wicked ambition of demagogues than the sweeping away of 10,000 men, three-fourths of whom could not read and write, on the field of battle.

My good friend you despair of the Republic because as you view it, with the attributes you allow it, you cannot see in it any authority or strength to vindicate or maintain its own existence against internal assault for a day. If I viewed it in the same light I should never imagine that I had a country worth a moment's thought, or capable of warming for a second the bosom of a patriot.

How can there be a patriot without a country? I cannot conceive. Correct, my dear sir, your ideas of the Constitution of the United States. See under its broad and benevolent folds one people assembled by voluntary action, cemented by all possible human ties, strengthened in rights and duties, by the highest divine sanctions man can invoke. Then look and see a small part of the people working by artful sophistries to destroy the ties which bind the nation together, then laying hold by violence and treason, and striving to tear down the vast fabric of the nation and strew the encumbered earth with its ruins, and ask yourself, are these men doing what they have a right to do? Is this my country? Do I love it? Would I defend it in a just cause?

That, my friend, is where I stand. I say those men, the moment they assume an armed organization to set at defiance the authority of the United States, they, and all who adhere to them, giving them aid and comfort, are traitors. I care not for their numbers, nor their forms of organization, nor for their pretexts. Treason yet never lacked a cloak. This is my country, a great and hitherto a glorious nation. I am proud of it, I love it, I owe it allegiance. I will defend its unity, its integrity, with all a man owes his country.

An American citizen in going thus far, whether native or adopted, makes no boast. He offers no gratuity, no benevolence. He offers nothing but what his country has a right to presume he stands prepared to render at her call, a simple duty. Observe, my friend, how our opinions control our actions. How erroneous ideas paralyze the arm of the patriot, and whilst his heart is bursting with mingled shame and rage at the destruction of his country, compel him to stand and look on in helpless imbecility, only in intention less dangerous than treason. Do you think if the people in Virginia, Tennessee, Kentucky, had not been at an early day sophisticated by the political party resolutions of 1798 and 1799, which have been like a church bell regularly rung, until half the people in those States think they are a part of the Constitution, that they would now be standing and proclaiming under the specious guise of resisting the coercion of a State, that the United States shall not suppress open avowed treason arrayed in arms against the nation? They are seduced in the madness of the hour by sophistries which dare not, as you see in the South, face the light of the doctrine of Jefferson, that error of opinion may be safely tolerated, whilst reason is left free to combat it. They

have silenced reason and will permit passion only to be heard. Your letter is a very suggestive one, and although mine is unreasonably long, I have not touched all your points.

Do you not unconsciously sometimes fall into the ideas of the German Empire, where, as history teaches us, to put a State to the ban of the Empire, was no novel or rare occurence?

This nation had a different origin, and is constructed upon a different and totally diverse model. In fact, our ancestors did not work from any pattern, they drew from themselves, and constructed an original fabric capable of resisting the tooth of treason and of time, which will grow brighter the more it is chased.

Yours with respect,

R. MARSH.

HON. C. REEMELIN.

CINCINNATI, Feb. 2, 1861.

HON. R. MARSH, *Steubenville, Ohio.*

Dear Sir: Your esteemed favor of the 31st ult. is before me, in the neat letters of a lady's hand, and I feel under great obligations to Mrs. Marsh for the trouble our correspondence causes her. Her kind assistance in this matter proves that you have, like myself, a wife, who does not study so-called "women's rights," nor does keep asking herself how much she is bound to perform in the joint burthens of life, or else you would have to select a copyist from the more contentious sex. I hope you do not ask Mrs. Marsh to read my letters, for then I owe her, as well as you, an apology for bad writing, hasty effusions, and I fear sometimes, too, bad spelling, so you need not fear that I shall myself play critic on these points.

I have now again a little more time, and hope to express myself clearer than previously. I did not mean, in my last letter, to draw a very disquisite line of distinction between civil and personal freedom, though there is a difference between the mere freedom of person and the civil liberty established in a government, and again is there a political freedom, as well as a liberty for entire nations. A man may have personal freedom, such as emancipated serfs, and yet there may not be civil liberty; and there may be civil liberty, as in Italy and Spain, and yet no political liberty, such as the general right to vote; and there may be all these as in Ireland, and yet they have not national liberty. What I purposed, however, by the remarks to which you take exception, was merely to bring to your mind again and again, that rights of persons and things, such as husband and wife, parent and child, master and servant, debtor and creditor, buyer and seller, voter and government, the tenure of property and other of the chief affairs of life, which go to make up the varied status of liberty for the inhabitants of these States, were not and are not, placed within federal rule, and that even in its limited judicial authority, as between citizens of different States, our General Government must decide by State law.

The Government of the United States must, when its limited athority comes in contact with these several relations, protect them as it finds them. It was not and it cannot be the fountain of either personal, civil or political freedom; it *secures*, mark the word, national independence and liberty. The word liberty, in the preamble of the United States Constitution, does not refer to the personal, civil or political liberty of the inhabitants of the States, it refers to international liberty, and the bill of rights in the Constitution does not relate to the *establishment* or *restoration* of rights of person or property to the people of the States, it is intended to prohibit infringements thereon by the Federal Government. The United States Constitution accepts in such matters the "*de facto*" status in a State as existing "*de jure*," and is herein subordinated, and very properly, to State law, to which, and *not its own*, it looks to ascertain this status.

I contend that the States and the people thereof, purposely and wisely withheld from our General Government all authority to fix or change the personal status of the persons, under State authority, by its fiat, and the word "perpetuate" liberty, refers to National and State independence.

I agree with you fully, that the rights of man are God-made, and not granted by government, and I have always looked upon all liberty *given* by government with the same suspicion that a Hungarian views the Constitution *given* his country by the house of Hapsburgh. Whenever our States and the people thereof shall get their liberties from our central Government, it will be a spurious article, such as no wise man will desire, and no true republican will accept.

Your other position, that personal rights, "when once taken away by law, the law of society must be produced to show a new grant," is, though I dislike to admit it, also true, and hence my assertion is certainly correct, that the status of

every human being in the United States, so far as the General Government can effect it, remains what it is by State law until changed by the due course of such (and not federal) law. No *slave* becomes free, no free man a slave, through federal authority, and accordingly I deny the "*normal condition*," spoken of in the Chicago Platform, as a federal norm. It is abstractly true, but when applied to our federal system, absolutely and mischievously false.

As to the tenure of real estate, I again aver that it was not essentially changed by the revolution. The titles, before it, came from the Crown, and these titles still exist. Since, the States granted certain lands to the United States, and the Federal Government has acquired some by purchase, and these lands are sold or granted to our people. The starting point was and is a *grant*, and I repeat, as an indisputable fact, that the royal grants to Penn's heirs are now respected in Pennsylvania, even to land which at the revolution, was not reduced to possession, and this is true in other States, also of other estates, such as the Rensselaer in New York. The ground I have taken is, therefore, true, that the legal status of persons and things were, when our present Federal Government was made, unaffected either by the Declaration of Independence or the Articles of Confederation, or the present Constitution, especially as to real estate and slaves, and only the Royal governments and their officers and the allegiance claimed by them was changed. It has ever, and does now, require, to be a rightful action, either a voluntary surrender or manumission or other due course of law, to free a slave. You are indeed correct when you call a people who thus respect *rights* of *property* which are repugnant to their feelings, as they are to mine, "a calm, thinking, considerate people." You most justly exalt their practical good sense. They were free and know what freedom is.

Allow me, however, to ask whether our children will say as much for those of us who, admitting the legality of slave tenure *in* the States, insist that when a negro, thus legally a slave, is brought upon soil where no valid prohibition to take him is in force, nor law declaring slaves free exists, that this slave becomes free, the soil being the common property of *all* the States in this Union. Did the forefathers so declare? No! They passed the Ordinance of '87 by compact with a State, State authority being the source of power in the premises. They, on the other hand, refrained to enact a similar law for the Southwest, simply because North Carolina and Georgia refused to grant the requisite jurisdiction. Slaves taken into Tennessee and Mississippi remained slaves, while those taken to Ohio became free. Our ancestors were indeed wise thus to respect legal conditions, and all our generation should have done and do, is to profit by their example, and not to try to make persons free surreptitiously by *inductive philosophy*, when scripture, usage and the Constitution forbid Federal intermeddling.

I cannot agree to your views as to the seat of sovereignty in our Union. Its fountains are the States and the people thereof. They granted certain *attributes* of sovereignty to their Federal Government; *what they did not grant is still with them.* You ask, "what distinctive attribute of sovereignty has been withheld?" I answer many! Look into our Ohio statutes and then into the Federal statutes, go into a State court and then a Federal court, and you will see at once the wide distinction. The United States Government has *enumerated*, *granted*, attributes of sovereignty, the States and the people thereof have the inherent unenumerated residue. The King of Great Britain is "a sovereign" personally, but the sovereignty of the Empire is in king and parliament. The Emperor of Austria is a sovereign person, but there is a sovereignty in Hungary, Italy, Bohemia, etc., which is outside of the person that may be the ruler. Receiving ambassadors is an attribute of sovereignty, but the essence of the thing itself is that final power and authority whose decision alone can finally and conclusively determine the very framework of all government. The people of these United States have, with consummate wisdom, refused to grant, either to the Federal or the State governments, *all* their sovereignty. They have given some to the Union, some to the States, but the very fountain, the "*reversions*" and the "*remainders*" are yet with them. These peoples have no sovereign, they have created no sovereignty over themselves, they have not even recognized a sovereign people of the whole country. There are sovereign peoples in this country, but no *one* sovereign people. *Supreme authority* with enumerated objects they have erected, but such supreme authority is not the sovereignty of our land. *Inherent*, *inalienable*, and *final* power is essential to sovereignty. Conferred power is not sovereign power; it is the agent of sovereignty. The United States Government represents our sovereignty to foreign nations. They have no

right to question it, but the States and the people thereof may, and if they should do it and abolish their Federal Government, no foreign nor home government has a right to dispute our action. As we did with the Articles of Confederation, even so we may do with the present Constitution, and foreign nations must send ambassadors to whatever government we point out to them, as the type of our sovereignty to them.

A sovereignty can not lawfully be abolished: that of our States and their people cannot; that conferred on the United States Government can. Sovereignty cannot be taken without consent; in our federal system we have expressly said that this may be done, without asking Congress, by the mere action of *State Legislatures*. Suppose a convention were called by the States and that convention were to abolish our present United States Government, which of the two sovereignties would outlive the other? That of the grantors survives all.

There is no "inherent weakness in the very principle of free institutions," as you seem to fear. There is *sovereignty* enough and to spare in our institutions, and you mistake the point at issue between us entirely if you think that because original and full sovereignty is denied to our Federal Government, that therefore the sovereignty of republican institutions is denied. Is there less sovereignty in the *United States* themselves because that sovereignty is not in the United States *Government?* Has Great Britain less sovereignty because her wise jurists deny that its sovereignty is not in the King alone? Our General Government has all the attributes it needs to represent our sovereignty towards foreign nations; it needs none so far as we are concerned, for in that direction the States and the people thereof have the sovereignty itself. This is not claiming sovereignty for despotism; on the contrary, it is defending our sovereignty against the assumption of despotic powers by the General Government, for, as I have again and again pointed out, the *sovereignty* of this people once yielded to the General Government as the law in the premises, and liberty is forever departed from this land of ours.

The United States Government raises armies, levies taxes, etc., as enumerated by you, *because* the Constitution gives it the authority to do so; if it did not it could not do so. This elucidates the marked distinction between the United States Government with its granted attributes of sovereignty and full sovereign power. Original sovereignties have *a priori* all legitimate authority, the "*summum imperii*," and they lack only that which is expressly yielded to others; our Federal Government is never in and of itself the supreme majesty, for its laws are supreme only if passed "*in pursuance of the Constitution.*"

The question arises, therefore, who is the final judge, whether the General Government has *so* passed its laws. You will at once say: *the federal courts;* I say, with equal promptness, the *States* and the *people* thereof. The agent is never the final arbiter of his own powers.

I answer, that in all *law cases* that are properly brought before our federal courts, these courts are the constitutional judges, but never as to those final settlements and adjustments of *questions* of political relations, such as the principals alone, the States, can determine with their sister States. Our forefathers made the Federal Government as strong and as binding as seemed good unto them. We may *wish* it stronger, but can't get our desires by *construction*, because the General Government is not the fountain of its own powers. Of this some complain, but

> "First, if thou can'st the harder reason guess,
> Why formed no weaker, blinder and no less."

I was quite carried away by your patriotic fervor for our National Government, and if my heart swayed my judgment, would have rushed with you into a violent passion, but I am a States Rights Democrat and have got to keep cool. Not every resistance to government is treason, nor is every support of government patriotism. My great grandfather went to prison for months rather than vote, as a representative of the people, unjust taxes. Some of my relatives were imprisoned lately for constructive treason, as the Crown lawyers called it. I have sprung from a town formerly a free hanseatic city, that, as the chronicles of it, which I read again and again, inform me, was noted, even centuries ago, for its obstinate resistance to federal, imperial and hierarchical arbitrary power, and you must not blame me if I am a little shy of your doctrines of treason, and if I do not see as quick as others, the rebel in him who resists an undue exercise of authority, and if I interpose that a government may commit treason against a people, as well as a people against a government. I do think that the world has oftener gained than lost by blocking the ways of power, and that a recurrence to first principles is always useful.

I have already instanced to you the uprising of Sweden under Gustave Wasa,

against the King of Denmark, under the Calmaric Union. The traitor there was the King. So in the so called revolts of the Italian cities against the Emperors of Germany, it was not treason in any true sense to fight for Italian independence.—Neither was it treason in Switzerland or its mountaineers to secede from the German Empire.

The cases are not cited because they are strictly analogous with our present situation; on the contrary, South Carolina staggers me with its hot haste and precipitous action, and it dilates my sense of justice the more because it overstrains a right acknowledged in our Declaration of Independence, and sanctioned in the very formation of our present Constitution. I have often thought that our President, Mr. Buchanan, and Congress, too, should have taken steps ere this to lead into safe and legitimate channels the movements of the South, and so prevent civil war; but what are my wishes when those in power are blind and do not see the plain path which the fathers followed so safely under similar circumstances. Things are surely going wrong, as they always do when misunderstandings are left to grow into animosities, and political strife into hate. But you ask me whether I am in favor of hanging, as a traitor, him who, in obedience to the fundamental law of his State, resists the Federal Government? I answer, no! When a State has acted in the highest form known to our law, a convention asked for and chosen by the people, a conflict arises unavoidably under our double allegiance, which takes from a decision of a citizen who concludes to obey his State under such circumstances, that taint of guilt which lies in deeds of a different stamp. With us, in contests between the General Government and the States, there is in every man's bosom a conflict of so harrowing a nature as to demand pity, rather than punishment, from those whose errors have brought on this conflict, and whose high duty it was to save the citizen from such reflections. To hang a man, thus placed between two of the deepest sentiments of his heart, his love of his State and his reverence for the Union, would be murder most foul, as it would have been inhuman and barbarous to have hanged Washington.—Where it is hard to tell whether it is a mere rebellion or a civil war, it is well to be unusually circumspect in our reasoning.

You are in error if you think I am biased in favor of ideas connected with the German Empire. I see, very well, the difference between resistance to an Emperor and that to a regular popular election. But seeing the difference makes me fair in my judgment to those who do not see it: for after all, the difference is only in the degree of forbearance due. We should, for instance, be slower in our thoughts and actions when opposed to the decisions of our fellow-citizens, and less ready to believe them wrongly intended, than we would be of Kings and Emperors; but whenever a fear of wrong has ripened into a conviction that there is a *settled purpose* to violate the rights of States or their people, and there is no common arbitrament provided, then the conflict above spoken of is inevitable in the citizen's heart, and all I can say is, that blame then lies primarily on those who have brought about such conflicting feelings. The history of my native land is full of such conflicts; I have, in reading it, always felt horrified at the execution of the disputants of each other, and I have always rejoiced at the exhibition of the spirit of mutual forgiveness in Emperors, nobles, clergy and people, for evidently in all these cases all were, in a certain sense, right, and in another wrong. Do you blame me if I see our affairs by the light of the history of my native country? That teaches me that he who does not love his local home cannot properly love his entire country, and that all national patriotism, to be right, must have its root in local attachment. Neither should override the other, both should co-exist.

Such, if I may presume to judge, were the double feelings of the framers of our Government. They loved their States and their Union, and they knew no patriotism that would make them hate their own homes. They acted by the light of historic right and knowledge; God bless them for it.

I do not share your condemnation of the resolutions of '98; Virginia and Kentucky were then right under the lead of Jefferson and Madison, as they resisted in a proper way federal usurpation. Would that southern and northern statesmen, in our day, had studied well their example. In them is recognized the final right to rule the Federal Government into a submission to the Constitution, but in them is also asserted the duty to do it by appeal to the sister States, and to a use of all the peaceable remedies given by the law of the land. They fix the sovereignty of the country in the right spot and forbid all *unlimited* submission to federal authority. They form, in my opinion, the true expla-

nation of the real objects of our General Government, and under them we can avoid the two extremes of our system, centralization and anarchy. The first named is always our greatest danger, because we have States, counties, etc., to keep us from entire anarchy.

You refer me to a debate between Webster and Calhoun. I have read it and agree with neither fully. The first makes out of a Federal Government, by construction, a civil Government similar to Great Britain, exactly what Hamilton wanted in plain language, and what the fathers refused. The second tries to unloosen the ties of the Union and make it incoherent. Jackson gives us the golden mean in his Farewell Address; with him I have stood for a quarter of a century, and with him I stand, still

It is a great misfortune to the North, that our altogether greatest mind should have been tainted by great physical passions and by a want of truth to great principles. Webster was morally impure.—Calhoun was pure as a private citizen—he was inflexible in his principles. His attachment to his section of the Union, overshadowed, however, too much, his love of union. And yet he was the greater statesman of the two, and if it had not been for peculiar events, would have become the teacher of a whole people instead of being that of a half only. Both were great men, the debate you mention shows it, they were giants. In our day we have pigmies.

You perceive we have at last got to the several sources of our political opinions, and apart at the outset we remain apart, but we differ harmoniously, if you will allow the expression; that is to say, we agree in our best wishes for the country we live in, but we differ as to the mode of government by which our happiness is to be worked out. You live in and are attached to a government which, if it were carried out as intended by its framers, is really not to your notion. You desire, therefore, to get by construction what is in fact not there, and no election result upsets your equanimity enough to throw you out of your republican balance. This is commendable patriotism. I fear we Democrats have not equal equanimity, when we shall, under the incoming administration, have to witness what we must regard as violations of the Constitution. We do not know how to bear with due patience an administration radically at war with our views of the Constitution. We regard our ideas of constitutional right as the true ones by the light of our history and impassioned reflection, and hence regard an administration as *illegitimate* which tries to carry out false principles, as we understand it. This feeling is not as bitter North as it is South, simply because our domestic interests are not *yet* the subject of federal politics. In the South Democrats are more vehement than Whigs, because, besides their common hatred of abolitionism, they detest also the impending general federalistic tendency of the incoming administration. If, then, I admit our less grace to submit, and that this is even more true of the Southern Democrats, you will, I hope, also conccede that there are peculiar circumstances explaining the difference.

We are not so used to being in the minority as you are, and the minority is not one in fact, only in law. You and the country have cause only to complain of Democratic malfeasance in office, we Democrats fear actual radical changes in the Constitution. A single law, in violation of the Constitution, like a national bank or a tariff, takes ten-fold, yea, a thousand-fold, from the people what a defaulter does, and the difference often is only between taking pennies illegally, technically speaking, and securing so-called legal privilege to absorb dollars. Both are wrong, and I have never hesitated to oppose them.

In the South their fear of constitutional violations is magnified by apprehensions for their local institutions. You complain of their harsh treatment of American citizens temporarily sojourning, or residents among them, who hold different views from themselves. The complaint is well taken; but allow me to suggest that political, like all other liberality, is a queer quality of the human mind. All are willing to discuss their neighbors' wrongs, none their own. We, in the North, are ready, indeed, to talk of slavery, but think of an atheist addressing a Presbyterian Church of ours, or a temperance lecturer before an assemblage of distillers or German coffeehouse keepers! I think you will agree with me that liberality is a virtue easy practiced on neighbors' foibles, but very rarely when our own cherished notions and interests are at stake. As long as the agitation does not endanger these it is permitted, but whenever it does, kings, priests and *people* want to stop the agitation they don't like. I wish I could say that you and I are entirely free from this propensity, but I cannot; and though I will not justify the bitter wrongs done by Southerners to Northern anti-slavery men, I must admit that their action is human nature.

My best wishes for your natal day. May you live many more and all in a united land; and may you and I agree to differ, but unite in a determination to preserve the Constitution intact.

Truly yours,

CHAS. REEMELIN.

STEUBENVILLE, Feb. 12, 1861.

Dear Sir: Your favor of February 2d is before me. Is it owing to the difference in the idiomatic characters of our two vernacular languages, although branches from the same Tuetonic stalk, or from some other cause that we so often misunderstand each other? I consider in the sense in which they enter into our discussion, natural and civil rights as identical, and they, I have distinctly said, are God-given and not man-given; and I have as distinctly and emphatically said that man cannot give them as an original grant, but only as a restoration after the man has been deprived of them. I put the cass of a man sentenced to the penitentiary for crime. His natural rights are suspended, but restored when he has paid the penalty. But his political rights to vote, to be a witness, to hold office, for example, are not God-given but man-given, resulting from the organization of society, and regulated, conferred or withheld by it. Whenever they are taken away, as a part of the penalty for crime, the deprivation is made perpetual and is not abrogated by the termination of his term of imprisonment, nor by any other mere negative. It requires a positive, an affirmative act, a pardon, before he can again exercise them, which, considering whence they originally came, that they were taken away without limit of time, that they come again from the same source, from man. I consider it a new grant—certain it is, it is not a restoration in the same sense in which the recovery of a God-given right is a restoration. I need not amplify on this.

You insist that the United States Government has nothing to do with the status of personal freedom of its citizens beyond protecting that status fixed by State laws, accepting the status *de facto* fixed by State laws as existing *de jure*, and that the United States is subordinated to the States in determining thereon. I deny your position, as stated, entirely. No State can fix or change the status of a foreigner emigrating to this country, make him a citizen or prevent his becoming one; permit or prevent his becoming a citizen of the State. He becoming a citizen of the State of his domicil by force of his naturalization under the laws of the United States and not converso. The United States is bound to see (Art. 4, Sec. 2) that a naturalized citizen enjoys all the privileges and immunities of a natural born citizen in whatever State he may choose to locate. And this would be equally true from whatever clime or race the emigrant might come, whether Ireland, Germany, Russia, Hindoostan, China, Japan, or even Africa, the Constitution having no restriction on the authority.

But we have seen that personal freedom is but one of the natural rights, God-given, which man has. Liberty comprehends much more than the mere right of personal locomotion or freedom. It includes the right to pursue his own happiness, and in so doing to acquire, possess and enjoy property. In a state of nature he would enjoy all these dependent upon his own arm and head only for security. In a social system he contributes a portion of his property, such as the constituted authority of the community may prescribe, to form a common fund for the protection and defense of all, and when required he is bound to add his personal services even to the sacrifice of his life, and he who shuns the discharge of his obligation, earns an epithet compared with which, to a man of spirit and virtue, death would be luxury.

And now, my friend, who takes a portion of the earnings of commerce? Who forfeits ship and cargo of a smuggler for evading the law, and for whose use? Can a State do it? Is it done for the use of a State? When the merchant has his ship and cargo unlawfully seized in a foreign port, does he display the Palmetto of South Carolina or the bull-frog of New York in his defense, and gravely inform the Secretary of State of the United States that they had not been respected and demand redress? No, sir; no. He unfurls the stars and stripes, and if disregarded the stars soon light the stripes to the appropriate chastisement. It is not as a citizen of a State that his rights, natural, civil or political are protected by the United States, but as a citizen of the United States, irrespective in what State is his domicil. I conclude, then, that the United States does exercise a great and comprehensive authority over the natural rights of men, not in subordination to the laws of the States, but paramount to them—each is paramount in its orbit and their is no collision in their orbits.

It is only when one or the other claims to deviate from its orbit that apparent collisions take place. A calm consideration

is always sufficient to dispel the delusion. Your erroneous conclusions rest mainly on two errors in your premises: 1st, our ancestors, in forming a National Government, found an anomaly, African slavery, in the midst of free institutions. After much controversy on the subject it was left in the States where it was, to the State laws, the Constitution of the United States sedulously evading any recognition of the idea that man could have property in man. They are treated generally as persons, sometimes as persons owing service, sometimes as persons immigrating or imported, in which last sense they are classed under the general head of foreign commerce. In any other sense the first clause of sec. 9, art. 1, is absurd, for if not a limitation upon the third clause of sec. 8, art. 1, it must be a limitation upon an authority not granted in general terms, and incapable, therefore, of limitation. It is an observable fact that in sec. 9 the migration of free foreigners is put in the same category with the importation of persons, presumable from the force of the term, to be owing service; that is, the same class of persons contemplated in the third clause of sec. 2, art. 4. By virtue of this the United States can lawfully discriminate between foreign races and decide who may and who shall not enter into the mosaic of our nationality. In the same breath, clause third, sec. 8, art. 1, the Congress is given equal authority over commerce among the several States. Can the word commerce receive one meaning in one member of that sentence and a different one in another member? There is a third member of that sentence, "and with the Indian tribes." Whatever authority is delegated by one member of the sentence is delegated by each. Under the 1st and 3d the action of Congress has been constant and strenuous. I am not aware of any direct action under the 2d between the States, but between the States on one hand, and territories on the other, commerce in slaves has been often regulated and prohibited. You have mistaken the treatment of that anomaly for the rule, when it is only an exception. Your other error consists in considering the territories of the United States as the common property of the States as States, instead of the property of the United States, one and indivisible.

Virginia or Ohio, as States, have no more authority to interfere with the organization or government of the territories than has the autocrat of all the Russias.—They have each their constitutional weight in Congress, and that must content them on that subject as on all others.

A State has as much interest in common with the other States in a steam ship of-war as in a territory, and upon the same argument, and has the same right to say whether she shall be laid up in ordinary or sent to sea, and whether she shall run East by North or East by South, as it has to say when or how a territory shall be carved out of the national domain, a government organized, the land surveyed and opened for settlement. Whether unnaturalized foreigners or negroes, bond or free, shall be permitted to settle there, or the population shall consist exclusively of free citizens of the United States is for Congress, and Congress only to prescribe. One point of contest now is to take from Congress the authority to regulate commerce between the States. Its bearing is seen. But when the phraseology comes to be adjusted it will be found to cover the commerce between the States and territories.

I have heard to satiety the song that the territories are acquired by the blood and treasure of the States, and therefore the States, &c. I deny the premises, and they gone, the conclusions fall of themselves. No State declared war; no man marched to battle under the flag of any State. The troops were citizens of the United States. They marched, fought and bled as citizens of the United States, one and indivisible only. No State contributed a dime of her treasure. At the commencement of the war with Mexico, some States advanced small sums, and were urgent, and some of the most refractory now, insolvent until they were repaid principal and interest. No State negotiated a treaty for the acquisition of any territory or paid from her treasury a dime for it. It was acquired by the United States, paid for from the United States Treasury for the United States, and is to be controlled and enjoyed by the United States in the same character in which it was acquired. A contrary doctrine, once yielded to, is a heresy which saps our institutions at the base, and we may as well then as ever, when that takes place, record the national epitaph,

> "How loved, how honored once, avails thee not,
> A heap of dust alone remains of thee,
> 'Tis all thou art and all the great shall be."

You ask me what our posterity may think of our practical good sense should my views prevail. If my views were new, if I sought to inaugurate new principles antagonistic to the practice of the Govern-

ment hitherto, it would well behoove me to make my steps sure, planting each one upon incontrovertible principles, but as I only pursue the beaten path our fathers have trod for eighty years, I may well rest upon their practice and their principles for vindicating it, leaving it to those who impugn their principles and practice under them to bring forth their strong reasons. If our ancestors had believed slaves were property by the law of nature, as horses or cattle; in other words, had they held that the normal (that is natural) condition of man was one of bondage, think you that they would have declared him free when brought from abroad to a land where he was a slave by force of a local law which you claim fixed his status paramount to the law of the United States? Our ancestors never recognized slavery as existing, *de facto* or *de jure*, one foot outside of the local limit of the State authority which recognized it. Where the Constitution of the United States had unimpeded control it has never in one instance allowed slavery until the case of New Mexico and Kansas. Our ancestors did not believe that the normal condition of the earth was one of bondage requirig an affirmative enactment to render it a place where a man oppressed by force might lawfully vindicate his natural rights. I do not wonder a man of your acuteness denies the normal condition. There is no tenable position for your doctrine this side of man's creation. And now, my friend, I will turn back your question and ask you what opinion posterity will form of this generation should we vote the Declaration of Independence a stale piece of sophistry, and after our ancestors have for eighty years kept slavery confined within the limits of positive local law we declare it the normal condition of the country, turn it loose to range at will, and leave to liberty the poor privilege of turning to bay on the defensive only, the exception and not the rule. I perceive we shall not agree as to what constitutes a sovereignty. Nothing but a despotism too strong to be overthrown will satisfy your idea. To my mind a government founded on the free consent of a numerous people, and clothed with authority to represent the nation in peace and war, within and without, is the truest and most legitimate sovereignty in the world. I do not confound the administration with the government. You and I have an opportunity to see the infinitely little in the head of a nation compared with which the experience of the witty Arch Duchess of Brandenburgh was tame and insipid. I disclaim all fervor of patriotism. I am constitutionally cool, my pulse, when in health, never exceeding forty-five, but I trust I am earnest, and when duty lies plain before me, ready and able to do it, however unpleasant. The Government is to my notion; I do not consider slavery as any part of it. It is an anomaly striving to be recognized as a part of the Government. I am opposed to its being noticed beyond what it has been; that is, being snubbed and kept from spreading. As to the Southwest, Kentucky and Tennessee never were Territories.—Alabama and Mississippi were ceded by Georgia with slavery expressly provided for. Florida and Louisiana were taken *cum onere*, the benefits, as considered, overbalancing the evils. Texas came unbidden and has gone unblessed. Let her go. "I'll trust myself with weapon tried, but never again with thee."

However ready I might be in a calm time to re-examine the Constitution, this is no time to consider amendments. If changes are to be made claims are to be made on one side as well as on the other. The three-fifths rule could never be put in again if once out. According to modern doctrines it is an unequal representation of property. It was not so considered by any one then. They were not considered property, except *quasi*, but persons. I desire with you to preserve the Constitution intact, that under it you and I and others may discuss our varying opinions respecting it in peace, safety and friendship. To enable it to be so, however, those bad men who hate it must be taught, sooner or later, and I think the sooner the better, that it has strength to make its authority respected and obeyed even where it is hated. Depend upon it, my friend, no government was ever or ever will be, however just, long respected or obeyed which has not strength and energy to make itself feared by the turbulent. The imbecility and corruption of this Administration has been by the factious mistaken for weakness in the structure of the Government itself.—God grant they may soon wake up to a consciousness of the serious error they have committed. Truly yours,

ROSWELL MARSH.

HON. C. REEMELIN.

CINCINNATI, Feb. 21, 1861.

HON. ROSWELL MARSH, *Steubenville, Ohio.*

Dear Sir: Yours of the 12th is received, and I would say at the outset, that it is not a difference in the idiomatic characters of two languages which leads to misunderstandings between us; on to contrary, it

arises from the fact, that you are constantly asserting truisms, which are, however true otherwise, inapplicable to the distinct questions between us, because, unless I have been totally at fault, we have discussed matters solely in their bearing upon the United States Government, or its authority thereon. I admit for instance, your position as to the regaining of a criminal's personal and civil rights, when he has served out his sentence, but does that prove that a slave becomes free, any where within the jurisdiction of the *United States*, in the absence of any due course of law to make him so? The United States are the Government of *all* the States, and surely, it takes "due course of law" to change a status, legal in any one or more of these States. The government of *all* certainly cannot declare *abnormal* the pre-existing institutions of its component parts — all authority, even State authority, must, I repeat it, use some due course of law to break the continuity of this legal status; how much more the Government of the United States. You are doubtless right, that no freemen can, in the United States be made a slave, be he a foreigner or native, but can a slave be made free by the arbitrary dictum of our United States Government or by a normal condition so-called, really an *absence of law* upon the subject? It cannot be so in a confederation composed originally and subsequently of free and slave States, and the common government cannot have a common law, repulsive and directly opposite to the legal status of one-half of its members. The territories were bought or conquered as the case may be, by that common government, and it cannot be sound ruling to say that one portion of the owners, may be excluded from the common use for reasons known, when the joint purchase or conquest was made. A tailor and a miller buy a piece of land; surely the tailor cannot object to letting the miller in, to be a miller, when he knew beforehand his vocation. It is inequality and not equality to say to the miller:— "You may be a tailor like myself on this land, but not a miller." You must see that the general government cannot establish a test for moving into territories, violative of that legal status, which according to the Constitution, it is bound to recognize. Nor can the people do so by majorities, no more than two partners can in a partnership of three alter the articles by a majority vote. The Government of the United States has no law of its own on this subject; it finds the status of the State law, which it did not and could not make, and which neither it nor the people can arbitrarily change. No due course of law can ever therefore spring from the action of our Federal Government, which unmakes property, except for matter connected with the rights of eminent domain, the war power, etc. Do we still misunderstand each other? If so, it is not from differences of language.

The matters you refer to, such as the naturalization of a foreigner, do not, in the slightest, weaken my position. I have always admitted that in a limited sense, the Federal Government fixes the legal status of persons, and have only contended that for the right to do so, the warrant must be found in the Constitution. What you say about adopted citizenship, therefore, goes to show only that upon that subject the action of the Federal Government is supreme. But why is it supreme?— Surely only because "in pursuance of the Constitution." The United States can make an alien a citizen but can they give him the right to vote? No, they cannot, not even for Federal officers. Ohio gave voluntarily to every citizen of the United States, over twenty-one years old, the elective franchise. But could a citizen from Maine vote unless a year in the State? Can a criminal, who in pursuance of a State law would be outlawed, be forced upon a State as a citizen? Now the iquiry is natural, why the difference? Why has the General Government the power to make *aliens* citizens for States and why not *natives?* The Constitution says:— "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," a clause which forbids simply the United States Government to discriminate against the citizens of any one or more States. The point always is, as I have stated it, the Government of the United States is never presumed to have authority, it must show the right to exercise it in the Constitution, and it can naturalize because the Constitution gives the power, but it cannot give the right to vote because the Constitution does not give the authority to constitute voters.

So, too, as to the protection of property on the high seas or in foreign ports; the United States represents us abroad, and its flag and protection is alone known to foreign nations, and of course the citizen is protected, either because the United States have made him an adopted citizen, or because he is a native-born citizen, the latter qualification being a State birth-

right. You are right, therefore, to assume that on some points of natural and civil right, the United States law is paramount, but it is only to the extent officially recognized in the Constitution. The United States is never subordinate in its authority to the States when it has actual power, but it is always so when it has no power and when the States have. The Federal and State Governments sometimes have subordinate jurisdiction.

The seizure of a smuggler's ship by the United States is a lawful act, because it is a power necessary to the power to levy duties. In fact, there need never be, as you correctly set forth, any trouble as to the proper sphere of the two governments; each has its appropriate orbit. Questions may arise in which it may take great wisdom to decide which of the two has jurisdiction, but if both will remain calm, and neither be attempted to be driven to the wall, the matter can always be settled by going to the source of all general powers: "the States and the people thereof." I approve of adhering to every authority given by the Constitution to the General Government, but I am against exercising doubtful powers and am always in favor of recurring to first principles and first authority, never to construction, for an extension of power.

The foregoing disposes of all you say about those exercises of authority, which, clearly given in the Constitution, have its sanction, and which I do not controvert. We are speaking of a normal condition, a *carte blanche*—a common law which you wish to make in the face of a previous legally existing right. Remember, I again beg it ever, that the question is not how a free man is to be made a slave, but how a slave becomes free when brought into a territory owned by a government, which has bound itself to follow in its action the legal status of persons in the several States. Where is the authority thus to break a legally established right? Does not the General Government by so doing exercise an undue force of gravitation, which forces the States to fly from their orbits from feelings of self-protection?

And now let me say, once for all, that our ancestors found no "anomaly" in African slavery in our midst. The Constitution indicates what would be an anomaly —and it knows no other, a King or anti-republican governments. Slavery existed under their very eyes, and they left it purposely *outside* of the action of the General Government, because the States refused to put it in. For the domestic institutions we have our State governments, and the legal status fixed for persons by them is law for the General Government, with few exceptions only, and those named and clearly comprised within the Constitution. The clause you quote about the immigration of persons proves this beyond question, for it speaks expressly of immigrations or importations, which "*States shall think proper to admit*," exhibiting, again and again, the tender care the fathers had not to infringe on State rights or interfere unnecessarily with their domestic institutions.

I have never asserted that any State or States can rule or claim the territories as States; what I have said, is that there is no authority anywhere to change the status of any person brought there while it is the common territory of the Union, the undivided property and subject to the jurisdiction of all the States, *except by due process of law*. Your normal condition cannot attach to a being who has lost it, who is a slave when he enters, and whose chains must be broken by manumission or equitable law. This is also true in United States vessels of war in its forts, arsenals and on the sea, in going from one United States port to another. It is even true of a Boston ship landing in Charleston and taking negroes on board for New Orleans. The owner's right springs not from the soil, it is not a question whether the law (statute) gives it; it is whether it attaches to a certain black person and it sticks to that person wherever he and the owner go, until broken by some act of the owner, such as entering a *State* where slavery is prohibited, manumission or such like; and so true is this that this slave status *re*-attaches to the negro if he voluntarily returns to the master, even if no longer in the State whence he migrated and if in a locality within the United States where slavery is not prohibited.

I will not weary you by attempting to reply to the distinction you strive to draw between a thing bought from the common treasury, and one obtained through seperate contribution! Are you really serious in believing that that makes any difference? I rather guess not! Where there is a common fund all are presumed to have paid their share.

Allow me now to explain a point brought clearly out by your remarks about "our ancestors believing slaves property by the law of nature, as horses or cattle." I hope you never understood me as saying that our ancestors so believed! If you did, it was indeed a misunderstanding. I hold the reverse of this to be true. They re-

spected slavery only as they did other property rights, such as bank charters, etc., so far as State law gave them sanction—naturally they regarded all men as free. A negro slave could be a slave only through State law, and their importation was sanctioned until 1808. After the prohibition of the slave trade the States could not add to the number of slaves from abroad; but for those in the States and their children State law continued slavery. The question between you and me is, therefore, not as to the law of nature—on that we agree—it is when the State law ceases. And as to this we also agree, that that State law cannot override other State law; that is to say, Kentucky cannot force Ohio to recog nize the slave tenure, but Ohio may do so, and if it does, or has done so, as in the return of fugitive slaves, it should keep its plighted faith. Where we disagree is, whether a State law dies at the State line if beyond that line there be United States territory? You contend that the law of nature retakes effect; I contend the State law continues until abrogated by valid law. Such a law, I say farther, the United States Government cannot pass, because it has not general legislative authority, and because it cannot discriminate against the property of citizens of the several States. Nor can the territories pass such law, as they are not sovereign; and moreover, that States growing out of territories must, as was ever done, especially in the lands falling to Iowa out of Missouri, deal fairly with any property found therein. To make this point clear beyond possibility of misunderstanding, let us suppose a territory on the Pacific ocean. One emigrant from Missouri takes slaves there, another does so from Cuba. The State law of Missouri continues upon the slave, because law to the United States; the law of Cuba dies, because in no wise law here. Hence I say, a being a slave legally in any of our States, remains a slave until freed by some valid legal procedure.

I am amazed that you should style this discrimination, the same as "declaring slavery the normal condition of the country." Must there necessarily be a normal condition? I have denied it—I deny it again. A slave is never a slave by United States law, he is by State law; hence slavery cannot be normal, nor can it be abnormal, as the United States have no normal rule on the subject, except its law prohibiting further importations of slaves. Any attempt to regulate the domestic institutions of States or Territories by stigmatizing the institutions of the States of this Union is an attack upon the rights of the States, a usurpation of authority not granted by the Constitution. Confine, if you please, slavery to State law, but give that law all its legitimate strength, and not one tittle beyond it. Adopt for it the same rule as all other State law, give it effect until it contravenes another equally valid law.

You make me smile when you fancy yourself treading the beaten path of the fathers. Did they assert the *normal* condition in any of the United States territories? They abolished slavery by *compact* with Virginia in the North West—they refused to do this for the South West.—Did Jefferson have a normal condition in the Louisiana treaty? Did he have such a thing in the act organizing the Louisiana territory? Did they, the fathers, put it into the Constitution? Do you mean to say that the Declaration of Independence, or the Constitution was drawn by them so as to include in the word liberty, their own slaves? Our ancestors never recognized slavery, nor any other property in the Constitution! True! But why not?—The right of property *existed* and those who held these rights did not need any recognition. They lived before there was a United States Government, and were therefore not befogged as we often are as to the Government they were making. They saw the creature grow before their eyes, and a parent would as quick ask his minor child to recognize his property, as they would ask this of their National Government. They gave it no authority to interfere, and imposed upon it only the duty to protect and follow the status fixed by that law, which was before the Federal Government was. Neither slavery nor freedom is the rule, neither is the exception. In both the General Government has only the duty to find the State law in each case, and having found it to follow it.

I always supposed you would find your position untenable, that the United States are our, the States and the people thereof, sovereign, and again I say, that I would vindicate its sovereignty towards foreign nations, even against my own native land.

I am not for amending the Constitution. I think it already contains all the South asks, to-wit: Equal protection to property. What we need, what the South needs, is a public opinion which is willing to give, from an honest conviction of their justice, all the rights due to every section of the Union. That's the reason I concede them, and I doubt the propriety of acceding to any proposition from any other motive.—

May the Constitution live forever, is my motto, and may you and I learn each day more that there is no safe anchorage anywhere but in constitutional ground. Let us also be just to those whom tempestuous revilings have driven out of port to sea; let us light for them the beacon-light of true constitutional law, so that they may return in safety to the old haven of the Constitution.

Yours truly, CHAS. REEMELIN.

STEUBENVILLE, March 8, 1861.

Dear Sir: Your esteemed favor of the 21st ult. has been some days on hand, but the business in Court and some other matters have claimed priority and had their claim allowed.

I am glad to see that we are drawing together upon some material questions between us, and I trust that we shall, in the end, be found to accord in all matters essential to the unity, peace and prosperity of our common country.

You admit my doctrine as to the principle on which a criminal recovers his natural and civil rights when he has served out his time. What was that doctrine? It was this: That it required a positive, an affirmative law to deprive him; but only the removal of that law, a negative and not an affirmative, to restore him. You ask if that proves that a slave becomes free anywhere within the jurisdiction of the United States in the absence of any due course of law to make him so. By due course of law I presume you mean some positive statute or judicial decision. If you do, I say, unhesitatingly, yes it does so prove to a demonstration. Note the argument: The normal condition of all the earth, and consequently of all the inhabitants thereof, irrespective of shade, complexion or color, is freedom and equality of natural rights. There is not a foot of earth or water on the surface of this planet where, in the absence of human laws, a man, a human being, attempted to be reduced or retained to bondage, to slavery, would not have a full right to resist, and, if necessary to his success, to vindicate his freedom in the life-blood of his assailant.

The color of the belligerents would be an immaterial circumstance in the case.—Do you admit or do you deny, so far? Next, I deny that anything in the Constitution of the United States, or any law yet passed in pursuance thereof, changes the normal condition of an acre of country subject to the exclusive legislation of the United States so as to authorize one man to restrain another of his freedom, except by virtue of a warrant issued by a judicial tribunal, or to appropriate his earnings except in pursuance of contract. State laws establish slavery in those States which enact them, and so far have changed the normal condition *within those limits*. Out side of them they have no more force than an act of Congress has in France. Now what has the Constitution of the United States and the laws passed by Congress done in respect to slavery?

The story is not long but it is very significant. The 3d clause of sec. 2d, art. 4 of the Constitution contains all there is in that instrument on the subject. Why is that found there? Did you ever pause to ask yourself? If the Constitution of the United States carried slavery on its wings wherever they were spread, was it not an absurdity to put it there? The 2d clause of art. 6 of the Constitution makes it paramount to State Constitutions and laws, and that would, on that hypothesis, cover the case. On the hypothesis that slavery is not contained in the Constitution of the United States, and that the State constitutions and laws have no extrajurisdictional potency, that clause of the United States Constitution has an appropriate and proper meaning. I have no antagonism to it and never had. A cheerful acknowledgement of its obligation and a hostility to it, draws the line of demarcation between Republicans and Abolitionists. Some of the provisions of the act of 1850 were harsh and subversive of cherished principles of security. For instance, read art. 4 of the Amendments of the United States Constitution, and then contemplate a Kentuckian claiming the right to search your house from turret to foundation stone without any legal process on his alleged suspicion that his slave is concealed there, under the penalty of your being indicted for unlawfully resisting him, if you reject his claim. Is it a fair construction of that clause of the Constitution?

There are other odious features which create false issues and render the law hateful where the Constitution fairly interpreted, would be executed in a spirit of liberality. I am glad to see some of its harsh features proposed to be softened down, and I think its efficiency will be promoted by the change. It was put there, because without it, neither by the Constitution or laws of Congress, nor of his State, had the owner of a servant any remedy, if his servant got beyond the jurisdiction of his State, any more than he

now has when he has once reached Canada. Now note the cautious limitation of the language. It is confined to the single case of the servant escaping from the State where, under the laws thereof, he owed service or labor, into another: If the master voluntarily carry or send him into another State that State may lawfully prohibit his taking him away again, without his consent; and the usual law against assault and battery and false imprisonment, covers the case entirely. In a territory, there being no express positive law prohibiting slavery and prescribing a punishment, the man who carried a slave there might not be punishable criminally, for that act, but could he vindicate his right to restrain him on a *habeas corpus*, and in the absence of that would they not stand equal before the law in a case of assault and battery? Clearly I hold they would. It does not, as you seem to suppose, require a positive law of the United States to change the status of one held in a State in a special condition. On the contrary, if the State desires to continue that status it must continue the possession, for a voluntary abandonment of possession and a change of status are convertible terms, and have been practically so held by all courts in free and slave States in many reported cases, when times were more favorable to a dispassionate decision than they now are. The reports of Maryland, Kentucky and Missouri are full of such cases. The Constitution of the United States, I repeat, does not recognize slavery as existing, except by force of State law, and does not recognize in that State law, or in slavery sanctioned by it, any migratory authority. You ask me if Jefferson had such a thing as a normal condition in the act organizing the Louisiana territory? I answer yes, he did. Read the act in the light of history and then circumstances. Spain had established slavery there.—France acquired it after her law was passed abolishing slavery in her then colonies, and held it but a few days. She did not extend her law of manumission to it.—Had she not authority to do it? Clearly she had.

In the treaty of cession the right of the people to the property they then held, including slaves, was secured. In the act organizing the territory we find the limits assigned to that clearly defined. All slaves carried there by sea thereafter were declared free, and the ship and cargo were forfeited though she carried but one slave.

Again, the same act provided that every slave carried from any State in the Union, there for sale, should be *ipso facto* free. Now, what was that but a repeal with certain modifications and exceptions compelled by force of the treaty of cession and circumstances of the law of Spain, sanctioning slavery there? Those laws remain unrepealed—they are early indications of the views of the Government under a Democratic administration, as to the authority conferred by the Constitution upon the general government over this subject. As precedents they are worth a thousand Dred Scott decisions.

The true point at which we diverge from each other remains unmoved. You claim a confederation formed by the States of sovereign independent States as the theory of the Government. I, a Union formed by the people, of the people taking from the States all the higher attributes of sovereignty, as intercourse with foreign nations, armies, navies, war, peace, coinage, treaties—even with each other or Indian tribes within their own limits — and all revenues arising from commerce with many other things, and leaving them only a limited local jurisdiction. You ask me whether I really think it makes any difference whether the national affairs are carried on by funds belonging to the nation as a unit or by a fund raised by contributions from the several States, and you express the idea that I do not.

I hold the difference to be nearly allied to that existing between a man who spends his own money in his own affairs, and one who as agent for thirty-four other men having each diverse interests, has a fund placed in his hands contributed by all, but the proportions furnished by each unknown to him and them and never attempted to be ascertained, which, nevertheless he is required to so expend that each shall have the benefit of his contribution no more and no less. In the one case the task would be easy, in the other I should wish for peace, and when the idea prevails am not surprised at finding contentions. There is, as I have before said, no difference in that respect between Arizona and a ship of the line, or a fortress. The nation through Congress must determine the disposition of each, by the same rules and on the same principles, viz.: the best interests of the nation in which the separate interests of a State or of a part of the inhabitants whether slaveholders or not, cannot outweigh the general good. There is in fact a more comprehensive view in which it should be considered when the authority of the General Government is once estab-

lished. If slavery did not now exist in the United States would any man listen patiently to the idea of introducing it by importation or by annexation of slave regions? I am sure not. Would it not be very impolitic in a utilitarian view, leaving all other considerations out, to do so? Now is it not the foundation of a territory to become a State, subject to the same considerations, and shall the claim of a man to the right to carry a mischievous institution there outweigh the best interests of all coming generations in that State? Has Utah a right as a territory to establish polygamy and may she claim justly a right to come into the Union as a State with polygamy sanctioned in her constitution? It is only a domestic institution, and is not inconsistent, at least at first blush, with a republican form of government. The words "may admit" instead of "shall admit" new States were not inserted without reflection nor without a meaning. You ask how a slave becomes free when brought into a territory owned by a government which has bound itself to follow in its action the legal status of persons in the several States. I think I have already answered this, but to be definite here, I answer. I deny what you assume as the basis of your position. The General Government has never so bound itself except so long as the person in question remains in the State whose laws fix his status or escapes from them without the consent of him, to whom the service is due. Not an inch beyond that can he invoke the Constitution of the United States, or any act of Congress, yet passed, or, as I think, that ever will be passed, to continue the status of the person who once owed him service. On the other hand the master by violating the terms on which alone he was entitled to his service, has given him, in the energetic language of Judge Gamble, of Missouri, the strongest letter of manumission the wit of man could devise. The earlier and better decisions in the slave States held such manumission, like any other form of manumission, final, and that the subject of it could not be again held to service short of a law for reducing a free man to a slave. Sophistries have of late been found for overruling that part of the earlier cases. I am gratified to learn that you do dot desire any amendment to the Constitution.

We cannot now hope for a body in which every proposition will be dispassionately considered as in that of 1787.

I have no idea that seceding States, at least some of them, will be represented in a convention. Should they not, and should amendments be prepared and submitted, must or must not they be counted in determining the ratification by three-fourths of the States?

Other sequent questions press themselves, and will readily occur to you. I fear the end of a long excited contest over amendments, will find the sections more exasperated and farther estranged from each other than the beginning. To unite upon any amendments is, I think, impossible now. The real struggle is to get slavery into the Constitution as an entering wedge, trusting then on an old principle, for its future development within it. It is a vain effort.

This letter has been written by snatches interlaced with "Mr. M. the Court wants you," and other matters. I fear it is a little disjointed, like the man's dictionary, though the ideas are well enough in themselves. Truly yours,

R. MARSH.

HON. C. REEMELIN.

CINCINNATI, March 13, 1861.

HON. ROSWELL MARSH, *Steubenville, Ohio.*

DEAR SIR:—Yours of the 8th is received. I am, like youself, glad that we are having an "issue joined." It is not, however, the issue you are constantly pressing, but one essentially different in fact and in law.—We are not discussing the legal condition of human beings generally, but that of slaves, *legally* slaves, in one of our States, taken by their masters to an United States Territory. The question is not, and cannot be, what is the common or statute law in that territory? as there were no people there to make a law, and as the Indians and white sojourners therein had no power to make any, the United States Government has no United States law upon the subject, and the only law there is is the State law covering the servitude of the slave. This State law you claim to abrogate by the universal law of liberty, and reminding me of the fugitive slave clause, you ask: "Why is it found there?" and further: "If the Constitution of the United States carried slavery on its wings wherever they are spread, was it not an absurdity to put it there?" I quote your words to point out once for all the fundamental errors under which you labor.—Who has contended that the United States Constitution carries slavery anywhere?—Have I? The very idea is repugnant to my feelings and judgment! I do not even concede that the United States Constitution spreads, in strict propriety, over the

present territories. It did over those ceded by the States but not over those purchased, for you, yourself, agree that the purchase of Louisiana was unconstitutional. Much less then can I harbor the idea that the United States Constitution either makes or unmakes slaves in territories.—That instrument has no law upon that subject, nor does it give power to make any. Equally fallacious appears to my mind the view so often presented by you, as if freedom came from the soil, the land, the acre. It is a *personal* relation—the man is free or slave, as the law may be. In one country the natural freedom of man in his person is set aside, in another it exists, and a judge has to be governed by that law, whatever it may be. A slave brought to England is declared free, because the English law so requires. One brought to Turkey is not set free, because the law does not so read. If there were, therefore, any law upon this subject in territories, that law would have to be obeyed. The Ordinance of '87 was such a law; it was passed in pursuance of a compact with Virginia, and hence valid. In the Ordinance for Tennessee there was no such law, and only a provision that all of the Ordinance of '87 shall apply to it, except the clause relating to involuntary servitude. In the Northwestern territory slaves became free *because* the law so said; in Tennessee and other territory the slave remained such *in the absence of all law on the subject.*

The clause in the Constitution you call my attention to, was written under that very impression. It reads: "No person held to service or labor in one State under the laws thereof, shall, *in consequence of any law or regulation therein*, be discharged from such service or labor, but," etc., etc. This clause contains two requirements—1st. The slave must owe *service* or labor under the *laws* of a State in the Union; 2d. If so held, he cannot be discharged "in consequence of the law or regulation of another State." The first recognizes the State law as valid to hold a slave, the second guards against the exercise of a sovereign right of a sister State to pass a regulation or law discharging a slave. The Ordinance of '87 does not contain the words *italicised*, for evidently the framers of the Constitution had no idea that a slave would be discharged either in the States or territories except "in *consequence of a law or regulation therein.*" They knew the States had a right to pass such a law or regulation, and hence guarded against it; but had no idea that a territory, the common property of all, might set aside the property rights of States and individuals, members of the common country to which that territory belonged.

We come back, therefore, to the true point involved, which is, what relation does the General Government bear to the territories and to those who migrate into them. You say there is a law there! I say there is not! To have a law of persons, there must be persons to make it as well as persons to apply it to. The only persons who come there, bring a law upon personal rights with them. That law was valid in a State of this Union, it made a human being property, and it designated the owner. That owner cannot be deprived of that property, "except by due course of law;" this is the language of the Constitution. Where is that due course of law to come from? From the soil, say you! Who owns that soil? The United States Government in trust for the inhabitants and citizens of the States. All your argument is, therefore, reduced to this: The soil of the territory makes a supposed law overriding an actual State law; this law of the *ground* unmakes the law over the *person!* A fiction destroys a reality!!

You quote the laws in reference to Louisiana against the importation of slaves from *abroad*, or for *sale* from States.—These acts do not prove your position. The importation of slaves is a matter specially referred to in the Constitution, and if our General Government has any powers at all in territories, it has of course those granted to it in the Constitution.—There were people in Louisiana, there were laws there, and a knowledge of those laws is absolutely necessary to understand *the gist* of the question as to that territory.—There must have been some special reason for the legislation you refer to, or else why was it not repeated for Arkansas and Missouri, both territories taken out of the Louisiana territory, but not populated to any great extent. Slaves were taken from Kentucky to both these territories, and also after they became States. But do you not see that you have disproven your own previous argument? You first assert that slaves become free in pursuance of natural law in the absence of law, and now you quote *laws* in pursuance of which slaves sent for sale become free. Would they have become so without these laws?

Thus we revert to the initial question: Is there a *normal condition* for persons in the United States? Is there such a thing in the United States Constitution? Is there a common law on this subject for all the

States? Is there one for the territories? If there be no common law, as clearly there can be none, who can legislate? The General Government may assume to do so from necessity, it cannot do so under the Constitution, except for Indians and in pursuance of State cessions or land regulations. Let us accede, then, the necessity of the case and the question instantly arises, can the United States Government, thus acting by tacit consent merely, declare a law of persons valid in some States of the Union, invalid in territories; in other words, can the right necessity gives, be strained to go beyond necessity? Can it set at naught the existing legal relations of persons brought there or coming from the States? The Fugitive Slave Law was always extended to all the territories. Why *this* universal practice?

It appears to me clear beyond contradiction, that the Federal Government cannot conjure up a fancied normal condition, or common law, contradictory to the legal status of several of the States of the Union; none such exist, none can be made by President, Congress or Court of that Government, as it has agreed to have none, but to follow the legal status recognized as existing *de facto* and *de jure* by and in pursuance of State sovereignty.

We agree, then, that there is no power in the General Government to make a slave; we also agree, that a slave, taken by his master to a sovereign State that forbids slavery, becomes free; but we differ upon the issue, whether a slave taken from a slave State *one* of the *United* States to a United States territory, may be discharged in the absence of all law upon the subject. There can be no common law, there being no preceding usage; and there can be no statute law as there is no sovereign legislative authority.

Now, it cannot be possible that the joint government of both free *and* slave States can rightfully claim that it may, by its will, declare that the theory of our government is contrary to the actual facts, and under that assumption enact that there is a normal condition for men in territories which is not in the States? It has no specific authority by the Constitution to do so—that instrument forbids it to deprive any one subject to its provisions of his property, except by due process of law. No citizen of the United States can lose his property rights anywhere within United States jurisdiction by any such shadowy normal condition, or by a claim of the natural rights of a slave who never had them.

We both admit that this right of property must be respected within the States in question, and I now ask, where is the line pointed out in the Constitution where this obligation ceases? The States never bound themselves to respect it, except as to fugitive slaves, but the United States are under an universal obligation in this matter. The distinction arises from the fact that each State is sovereign in its legislation as to the rights of persons, while the United States must acccept, as law, the relation fixed by sovereign State authority.

Again: we jointly agree that the Federal Government is not bound to recognize rights of property attached to persons or things brought from abroad, as the Constitution very clearly confides this very subject, of the importation of foreigners, to our General Government. But we disagree at once, when you attempt to apply the rule established in such cases to citizens emigrating from our States into territories with or without slaves. You seem determined to forget that slavery existed before the United States Constitution, and that the property rights which you labor so persistently to keep out of the territories, are the legal regulator of the very slavery which preceded that instrument. Of course any right of property in States existing when the Constitution was made, comes under the clause that no man shall be deprived of his property, except by due course of law. Deprived by whom? I say, by the United States Government against which this prohibitory clause is meant. That government has no sovereign authority in this matter, its action on such property must be simply protective of, and subordinate to, the owner's rights. The words, as I write them, chill me, for I feel deeply for human rights; but in matters like these involving others' rights, we must be guided by the calm, yea, I may as well say it, COLD reasoning of intelligence, rather than the warm illusions of our feelings. I, at least, feel myself compelled to decide this question, not by what my anti-slavery heart wishes, but by the inexorable logic of stern constitutional duty.

We labor under about the same feelings, for we both are against slavery, but we differ widely in our understanding of the law in the premises, and hence we wonder at each other's obstinate adherence to our respective views; but I surmise that your firm reliance on many points you had hitherto taken for granted, begins to be somewhat shaken, while every argument in the discussion exposes more vividly the point where your error lies. You look at the

United States Constitution, and ask with a puzzled countenance: where is the clause that recognizes slavery? I look at the same instrument and ask: where is the clause which gives to the Federal Government any authority over the rights of person? Where is the power granted to make by law of Congress, or executive degree, or judicial decision, a rule on matters reserved to the States and the people thereof? They were and are the masters and creators of their general government, and hence it is strange that a so much better lawyer than myself, such as you are, (and I am sorry to have to admit that this is no compliment,) should assert that a State law, fixing a legal status for persons, has no more force in our territories than an act of Congress has in France! Now, it is an actual fact, occurring every day, that the contrary is the rule in nine-tenths of the affairs of life. Our marriages, our property, (outside of real estate) even corporate rights are recognized in territories, and it needs only the proof that they accord with State law to give them legal footing. Banks chartered in States do business in territories; corporations incorporated in New York build railroads, telegraphs, etc., in these same territories, and apprentices would be included in this recognition if it were not a trust created by the State over minors, which makes the relation amenable to special courts, so that a removal of the ward beyond the jurisdiction of the court is an offense.

Another oblique position of yours is, the idea that the United States Constitution carries freedom to every place it touches, and you persist in making me say that it carries slavery everywhere. The truth is, the Constitution carries neither slavery nor freedom anywhere; it is expressly prohibited from meddling with either. The Federal Government is not a dispenser of rights, and the most valuable rights of person and property are those named in the bill of rights, and particularly secured as against federal interference. I am free to say that all the good obtained through the Union would be worthless the moment that government becomes the ruler in matters like these. To preserve *due* State independence and to prevent *undue* national power, are duties taught us by Jefferson, Madison and Jackson, and as to my rights of person and property, I feel safe only because the generation which made the United States Government was wise enough to prohibit that Government from improperly meddling with them. Once make our General Government the source of our civil rights, and mankind will be startled by the tyranny it will then be capable of; it will then as much outstrip in corruption and arbitrary action all past governments, as it did them in its beneficent working when in charge of States Rights men.

I coincide with you in almost all you say about the Fugitive Slave Law. I have no doubt that it is unconstitutional: but I am equally firm in the belief that Ohio has not done her whole duty in this matter. But this does not justify the General Government to coerce us into carrying out our obligation assumed by us in the ordinance of 1787, as well as by becoming a State. Kentuckians, and especially Virginians, should be made to feel, when they come for their fugitive slaves, that they are in a friendly State and among a people who never repudiate an obligation, however disagreeable it may be. Then no one need search our houses, the federal authority would grow shorter and our affections larger, *both* great considerations at this time.

I am sure we shall never agree on your theory of our General Government. The Constitution and its history directly contradict it. The Constitutional Convention was called by the *States*, they voted in it by *States*, it was "*submitted to a convention of delegates chosen in each State by the people thereof.*" (I quote from the resolve of Congress;) the *States severally* called conventions and ratified it as *States*; the Constitution itself requires *nine* States to ratify it, and even then it was to be binding only "*between the States so ratifying the same.*" (I again quote from the Constitution itself.) I think it worse than futile, with this plain historic statement before us, to try to construe the States and the people thereof out of the Union as its founders, and to get in their stead a "people of the United States." It is simply an attempt to falsify the record. We had before the Constitution, we have now, peoples in our several States, and whenever you prove there are no such "peoples" you prove away also a people of the United States, for to have a people of "*United*" States, there must be previously peoples in the States to be united. I am really sorry to see you, so true an American and so able a jurist in matters generally, mis-state and misconstrue the proudest title of our constitution-making statesmen, that of having formed a Union and an effective Government without destroying State independence.

There is a vast difference between the

question you ask me, "whether, if we had no slave States in the Union, we should admit any into it;" and that, raised by me in so many forms, "whether, having fifteen already in, we should persistently shut our eyes to this fact and the inevitable sequences which follow from it, and thus blind to the truth, argue on slavery in territories and States." We read in an old book about "straining at a gnat and swallowing a camel." Our fathers, it seems, swallowed the camel, our generation strains at a gnat. They formed a Union of, all but one, slave States; they devoted a southwestern empire, in territorial extent, to slavery, and a northwestern one to freedom; our people of to day quarrel about the "*remnants*." To the Union the fathers made, part slave and part free, I came voluntarily, and after five years' residence became a citizen of the United States. What right have I to turn up my nose at the domestic institutions of one-half the States composing this Union? Am I a citizen of the northern States only or of all the United States? I cannot and will not divide my sworn allegiance to *all* the people of *all* the States of this Union, and I abide in good faith by all the legitimate consequences, flowing from the fact that I am a citizen of a Union, part slave and part free, and I now say to you that your "normal condition" dwindles before the fact here pointed out. Slave States were, and are in the Union, and you must seek for your *normality* another country, here it is an untruth and a fallacy.

Believing as I do, that our United States Constitution does, as it is, full justice to all the States, if we will but view it without prejudice, I wish for no amendment. What needs amending is public opinion, it puts its passions into our politics, and there lies the mischief. The slave States ask, of me and you only, that we abstain from settling local matters through federal politics. I cheerfully accord it, and would be still more glad if, by common consent, all and every entanglement with the domestic institutions of States and their people were forever avoided, for that is exactly what I want. I am for no policy which increases the connection of our Central Government with local affairs, and especially with slavery. Hence, I stand by the Constitution made as it was by States Rights men and interpreted as it has been by States Rights Democrats.

I remain, truly yours,

CHAS. REEMELIN.

MARCH 15, 1861.

Since writing the forgoing, I have re-read your last letter, and I find that I overlooked some parts of it, and failed to reply fully to others, hence, you must allow me a few more words.

I do not see the cogency of the deductions you draw about the regaining of freedom by criminals, nor their application to slaves, especially not the bearing this has on the question how far the United States Government may interfere with slavery. A criminal looses his freedom by judgment of court *for a definite period*, and of course becomes free again on the expiration of that period. The slaves whose legal status we are discussing, never were free in the eye of the General Government, but property, which like all other property, it protects when within *its* jurisdiction, not because it made them, or would make them property, but because they were, and are such by State law, where alone is the authority to determine such matters. The United States Government finds them slaves, and there leaves them, having no power nor responsibility in making them such. They are not sentenced like criminals for a term of months or years, but are slaves for life, as their parents were before them, and as their children will be after them unless they are emancipated. The issue ever is where is the authority to abrogate this relation of theirs to their masters? You argue in favor of that which you desire, I by what is the actuality. We both wish the same, but you permit your idea of what *should* be, to override your judgment as to the actual facts! You are out hunting machinery with which to remove an evil, and finding the United States Government handy, press it into your service. I demur, and contend that yielding to that Government power for such a purpose, is yielding it for all purposes, it becomes unlimited and then of course all liberty departs. The Federal Government never looses by not getting undue powers; on the contrary it gains by not having them, as the less it meddles with domestic affairs, the stronger it is Let us be thankful, therefore, that it has no law in such matters, that it takes it as it finds it, and is without authority to charge it, or supply its abscence. In short, let it ever be understood, that the State Governments, and not the General Government fixed the legal relations of our black race.

The normal condition of all mankind has nothing to do with the question.

the *international* and not the *civil* law furnishes the rule of construction and ascertainment in this matter, and the inquiry must first of all be made and settled where the jurisdiction lies. I again aver *not* in the United States Government!

You speak of the inherent right of every human being to his freedom, even to shed blood in its vindication, and I have never questioned it, and yet, in case of an insurrection of slaves, would not the General Government, on call from a State, have to repress it? And why? Because the Constitution says so! But could it or would it without the application of the respective State Legislature or Governor do so? Certainly not! Here is your *inherent* right again in conflict with the Constitution and the rights of a State! Which determines the action of the General Government? You see there is the freedom of persons and the freedom from domestic violence by a State; so is there a State liberty and a personal liberty, and each is entrusted to different public organizations. You would free a negro by the General Government, I would keep my State free as against the same Government. In my mind the Federal Government is dangerous to liberty the moment it is boundless in power; in yours it is the liberator of slaves. The future, when you and I may be gone, will tell whose ideas were right.

I deny the right of France to liberate the slaves in her colonies against the consent of the owners, as our ancestors did that of the British Parliament in the North American Colonies. History has acted in this matter and pronounces the wholesale emancipation of the Republicans of revolutionary France to be an act of folly and injustice. Moreover, that act of *France—gone mad*—never took effect in Louisiana, nor did Jefferson sanction for a moment such an idea. He never claimed that slaves, held by State law, could be emancipated by federal will. Abolitionist as he was in his State, he never was such as a federal officer. Some silly folks see an inconsistency in this; they do it because they don't understand the nature of our governments. Every American statesman must, necessarily, commit the same inconsistency. Washington, Madison, Jackson, Clay, Silas Wright, etc., all did it. I see in it, however, only the innate, clear-sighted, discriminating intelligence of their minds! They, each and all, recognized the continuity of slave tenure until broken by sovereign State law or manumission. The ordinance of 1787, and that for the territories south of the Ohio river of May 26th, 1790, were drawn in that spirit, for without Virginia's authority slavery could not be prohibited in the first, as it was not without that of North Carolina in the second. Not a foot of American soil is now free in our Union, unless made free by State consent; nor has a single slave become free, except by the sovereign act of States or individuals. Hard words, you will say, and I feel all their hardness, but it needs hard sense to remove soft illusions.

Do you really mean to contend that the power of the United States Government over the inhabitants or immigrants into a territory is the same as that over the inmates of a National ship? I pause for a reconsideration on your part on this point.

You compare polygamy with slavery, and assert that at "first *blush* the first is not inconsistent with a Republican form of government." I am shocked to find such words in your letter, especially as you knew that your good wife would have to copy them. Please now to look well to your previously maintained opinions and answer me: Can the Federal Government pass a law on marriage? No! Next, is not the universal rule upon the relation of the sexes in all the States, that of the marriage of *one* man to *one* woman? Thus I draw the conclusion, that the United States authorities, though unable to pass a law upon the subject, are not bound to recognise in our territories a plurality of wives. An United States judge could, therefore, rule with great propriety, that such a relation, having no foothold in any State law, and there being no power in territories to establish it, it is void, and accordingly give the inheritance to the children of the first wife. This should, of course, be done in a proper case. I am, moreover, willing to go further and yield the propriety of Congress or even the President giving public notice in the name of all the States of the Union, that polygamy being repugnant to the laws of *all* the States in the Union, that plurality of wives is an illegal relation in any territory of the United States, and to order all officers to treat it as such.

You perceive that we have here a veritable "*normal condition*," a universal rule in fact! If fifteen of our States had from time immemorial had Turkish laws sanctioning polygamy, the facts would disappear, and with them the normal condition. Hence, whether "inconsistent with a republican form of government" or not, as long as the States are *unanimous* against polygamy, you and I must even be content with our excellent helpmates, and at once dismiss all lurking hope that we may, by

moving into United States territories, vote ourselves more wives.

Kindred to this is the question, whether one joint owner in a piece of real estate can properly object to the occupancy of a co-owner, upon grounds as to the co-owner's personal relation, when that relation existed when the purchase in common was made.

In conclusion I must say that it looks to me as if we were discussing an irreconcilable radical difference as to our United States Constitution. We agree upon abstract axioms, but differ in their application to our Federal system. You find powers in that government, by implication, which I deny, and the difference arises that you argue from the stand-point of a civil government, I from that of international relations by the law of nations. You are right if our United States Government is a civil government; I am right if it is a States Union. Accordingly we do not disagree as to the moral rightfulness of slavery, but whether the central government of a number of State governments can ostracise the institutions of one half of these States by declaring in favor of a theoretical normal condition adverse thereunto. This would, in my humble opinion, make the agent the principal, and to that I cannot assent. Truly yours,

CHAS. REEMELIN.

STEUBENVILLE, March 26, 1861.

Dear Sir: Your esteemed favor of the 13th came to hand on the 16th. Where do you find what you have all through our correspondence seemed to take for granted, viz.: that the United States have agreed to have no normal condition of its own, but to follow that recognized as existing *de facto* and *de jure* by State sovereignty? In the extent which you give it, I utterly deny, as I have repeatedly done, any such agreement. The Constitution of the United States recognizes slavery in the States which sanction *it* and provides for the recovery of such as *escape*, *not* such as are voluntarily carried beyond those limits. You claim that it requires a positive prohibition to prevent slavery. I contend that the abscence of a positive sanction is sufficient. The difference goes back to the law of nature. Was that a law of freedom or of slavery? You agree that a master who takes his slave to the territory of a sovereign who prohibits slavery frees his slave. I go farther because my elementary principle inevitably carries me farther. Yours as inevitably exhausts itself at that point. I say a master who carries his slave to a country where slavery is not known to the law frees him. And I say further that a territory where the United States has *exclusive* jurisdiction is a territory where slavery is not known to the law. I ask again what response a judge in such a territory must make to a return to a *habeas corpus*, that he had the person in court and claimed the right to detain him because he was his slave? I care not how the return is varied nor how he derives title whether from the King of Dahomey or from a statute or custom of South Carolinia or of Virginia. All would be equally patent and equally impatent in the *locus* of that court's jurisdiction. A law enacted by a lawgiver having jurisdiction over the *locus in quo* sanctioning the status must be produced.

The principle of the local restriction of laws of domestic relations goes much farther, for if an apprentice be bound to a mechanic in Ohio to be taught the trade, and the master remove with him to Indiana or Kentucky, the indentures are forfeited. It is singular that no case is reported of an attempt by a master to hold a slave in a territory, at least I can find none. Cases have arisen in the free States, and with a uniform result. You say no prohibitory statue can exist by United States law, in another place you say you smile at my idea that I adhere to the doctrines of the fathers of the Constitution, leaving to those who impugn them the laboring oar. Now it so happens that within forty years after the adoption of the Constitution, Congress did pass some fifteen statutes, prohibiting the carrying of slaves from slave States into territories, by land and by water, and in some of the cases they were slave territories. A diligent search does not show an instance in that time in which the Constitutional authority was disputed and I think the yeas and nays were never called on the passage of such a statute. They were approved and signed by Washington, Jefferson, Madison, Monroe, Jackson, all slaveholders, and as likely to know the rights and authority of all parties as any body now.

You ask if I really mean to contend that the United States has the same right of property and jurisdiction in a territory as in a national ship. In answer at once I do assert it as undoubtedly true that they have. Why not? Both are purchased and paid for out of the same national fund. Both are objects of purchase, barter and sale.

The United States has more than once conveyed away as well as acquired terri-

tory for an equivalent. It was the plain natural idea of our good fathers that having acquired, they and they only had the right to govern and lay the foundations of the future community there, that induced them to mould them as they did.

Their legislation over them was not confined to slavery. The laws of descent, of dower, wills, transfer of title inter alia were prescribed. I tell you my friend, the idea that the State laws are entitled to affect the control of the United States over the territories, is a modern heresy finding no warrant in any Constitution State or National, nor in any legislation under them. It can only be established by denouncing all the legislation respecting the territories, down to 1854, as unconstitutional and void. You refer me to the principle that no man shall be deprived of his property except by due process of law as contravening my doctrine. I admit the principle and will defend it in a proper case as firmly as any one, but I insist that when a slaveholder brings his slave into Ohio, or carries him to a territory where there is no statute sanctioning slavery, he does lose him by due process of law, and has the reflection that his loss is the result of his own imprudent act. You admit that the rule of the United States is freedom as to all slaves brought from abroad The distinction is that all slaves brought into the United States, since 1808, are free, although brought into a slave State.

I rejoice that what you feel compelled to advocate is repugnant to the impulses of your nature. I did not doubt it, nor need that test to prove your sincerity in the doctrines you advocate. I said within the exclusive jurisdiction of the United States. The distinction is the very hinge of the argument. This and the other heresy that the States, and not the people, formed the Constitution of the United States, are the sources of all our present troubles, and could not be reasonably expected to produce any other or better fruit. Had such been the real origin and principles of the United States Constitution we should have been as much torn and distracted by civil war forty years since, as Mexico or any South American State has been. The question was made, debated and settled in the convention in 1787, how the Constitution should be ratified and adopted, whether by the State organizations or by conventions of the people. Conventions were adopted for various reasons in form, all, however, concentrating in the principle that a Constitution being an organic law could only spring from the people, the source of all authority. The State organization being a delegated authority was admitted, apparently on all hands, to be inadequate to divest itself of a part of its constitutional authority and transfer it to a third party. The most of the little that passed on the subject in the convention will be found in the Madison papers, vol. 3, page 1468 to 1476. Luther Martin, of Maryland, on that point, being decided against his resistance, left the convention in discontent because the State authorities were passed over, and published an intemperate pamphlet against the convention and its labors. It fell still-born at the time, but many of his ideas are now resuscitated by men who have no idea of their origin, and who, in their zeal to place the States paramount to the United States, read the Constitution of the United States with the sixth article left out.

You have not yet answered my special plea, in a former letter, of a Connecticut man indicted for treason against the United States, that the State of Connecticut had not the constitutional authority to transfer his allegiance to the United States Senator. Mason, on that principle, declared that he owed no allegiance to the United States, but that all his allegiance was due to Virginia. On your doctrine he was right, and Senator Wigfall was also right in the further sequence from the same premises, that the withdrawal of one State dissolved the partnership as to all, requiring a new partnership contract between those who desire to continue the Union. This is so familiar a feature of the law of partnership that Senator Wigfall, or even you or I, humble County Court lawyers can claim credit for no remarkable sagacity for the discovery. The error of Mason, Wigfall and my friend Reemelin (pardon the association) is in the premises. The deductions are perfectly legitimate and are not half exhausted yet. I cannot imagine where you think you have seen any hesitancy on my part as to any constitutional doctrines I have advanced. I am not aware of any. Nor do I look with any puzzled countenance at the Constitution. All its provisions, the legislative, executive and judicial transactions under it, and a vast mass of political and partisan controversies over it, have long been as familiar to my mind as household words.

It is by no means singular that the great resistance to the adoption of the Constitution in the conventions, and in some of them it was long and very bitter, was be-

cause it was not what it is now claimed by the Democrats and Southern men that it is. The opponents of the Constitution were then known as States rights men.—Gerry, of Massachusetts, who become Vice President, and Mason and Randolph, of Virginia, who became leading States rights Democrats, refused to sign it as members of the Convention, strenuously opposed its adoption in their States, and George Clinton, of New York, who also became Vice President, resorted to every means to prevent its adoption.

That the States have very important constitutional authority left with them, and that it regulates and controles nine-tenths of all the ordinary concerns of life *within each State*, that we perceive its action in the avocations of life ten times where we do that of the United States once, is true, and I have never intimated the contrary; but where does it transcend the boundaries of the State in any instance or in respect to any species of property? I say nowhere in no conceivable case. A Kentuckian cannot recover his fugitive slave in Ohio by Kentucky law, but must resort to United States law for the purpose. The Constitution gives Congress power to regulate commerce between the States, and the commerce in slaves is included in that clause as well as the one respecting foreign commerce. This authority has been exercised. The 8th, 9th and 10th sections of the act of March 2, 1807, put the coastwise commerce in slaves under very severe restrictions, interdicting it absolutely in vessels under forty tons burthen. That act is still in force. It has been proposed to strike out that clause of the Constitution lately. I do not think the amendment could be effected. The change would be much greater than first impressions would indicate. The Constitution of the United States is, to an immense extent, guarantor of personal and property rights. Every clause of sec. 10, art. 1, restrains the States from acts by which the rights of persons and property might be infringed, and such acts have, in a multitude of cases, been annulled by the Supreme Court of the United States. The ratification was to be by the conventions of nine States.

Nothing more surprises me than your idea that "if we strike down the people (Query. Citizens?) of a State we have no people" (Query. Citizens?) of the United States. Was you naturalized a citizen of Ohio or a citizen of the United States? Is your citizenship a thing different from mine, I being native-born? According to your doctrine we have no man eligible for President as he must be a natural-born citizen of the United States, not of any State.

I do not see that there being or not being slave States in the Union can effect the normal condition of territories where the laws of no State, slave or free, have any potency. Their normal condition must be slave or free, it cannot be both in the absence of human law, and to determine which we must appeal to the law of nature. That polygamy is inconsistent with the peace of families, with good morals, with public prosperity, I do not doubt, and I think you and I would agree in predicating the same things of slavery. Both are twin relics of barbarism. But how the one, my position, is any more inconsistent than the other with a republican form of government, I am unable to see. Can you enlighten me on that matter? I assure you I do not repine at being unable to enjoy either, but most think both equally require a positive law to tolerate them. I answer your last query by denying that the United States Government has any analogy to a partnership. It is a government in which the decision of the majority, expressed in the prescribed mode, binds the rights of all.

My active season is commencing, and I may be compelled to close our interesting correspondence. Indeed I do not see that anything new can be elicited on either side, unless lawyer-like we array our authorities in martial ranks on either side.

Truly yours,

R. Marsh.

Hon. C. Reemelin.

Cincinnati, March 29, 1861.

Hon. Roswell Marsh, *Steubenville.*

Dear Sir: Yours of the 26th opens with a question, which again and again exposes the radical difference there is between our views upon the United States Constitution. You ask, where I find that the United States Government has agreed to have no normal condition of its own, but to "follow that recognized as *de facto* and *de jure* by State sovereignty?" I answer, it did so when the clause was inserted into the Constitution that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved respectively to the States or to the people." This is the final agreement between the States and the United States Government; it means that that Government shall never attempt to get powers by a *priori* reasoning, by appeals to natural

law, or by analogy to civil governments. It means, further, that in all cases where the Constitution itself is silent, the law and authority in any case shall not be sought by *overleaping* the States and their people and by roaming in the wide fields of law generally, but by an immediate reference to the States and their people and their laws. Neither the laws of nature nor the civil law, nor any other law, can be law for the United States Government, except that willed for it by the States and the people thereof in the Constitution; and furthermore, outside of that instrument there is no law anywhere or for any person or any thing, except State law. Two sources, then, and no more have we in our several governments; first, the Constitution as the law of our international Union, and second, the State laws for all the common affairs of life. Hence, I say, the United States Government has agreed, in all cases where no *power* is delegated to it, (and it has none as to rights of person, to which I applied my argument) to have no normal condition of its own, but to follow that recognized as *de facto* and *de jure* by State sovereignty. Such is, as far as I know and can find out on inquiry, the rule in our United States Courts, and they, in comity to the States, have even adopted in each of their district courts, as their mode of procedure, that in force in the State where they sit.

This brings, as I have already said, to the surface the very line which separates us. You search out the law for and in our territories outside of the Constitution and the State laws by going to the law of nature and to *a priori* reasoning. That natural law of freedom of person has, however, as much and as little force in the *States* as in the *territories*, it exists for all as a sort of fundamental theory; but, let me ask, why is it not enforced for all? Simply because other law has taken effect, and upon whomsoever that other law, prescribed by supreme power, attaches within the same political unity, he cannot get clear of it, except by the act of another supreme power removing it. Now, then, let us see who is the supreme power in the question at issue between us. In a government, uniting by their voluntary action sovereign States into a common international Union, there cannot, in the very nature of the existence of the latter, be any other fountain of authority and law, except the grant of those who created it, as expressed in the Constitution the written evidence of the compact, and any and all attempts to reach authority and law for such union by philosophic or other general legal reasoning, or by analogy with other governments, are efforts to interpolate new powers against the will of the sovereign members of the Union. They are, in fact, an illegal, fraudulent mode of changing the union compact itself by stepping beyond and outside the parties to it. They render nugatory every reservation of powers and every safeguard in the Constitution.

To make this matter plain beyond cavil, let us briefly go over the process by which we obtained our present federal system. There was a time when there was no supreme or universal law *of any kind* over our entire country. Certain free and independent States entered into a confederacy, with imperfect rules, and hence they convened in a delegated general convention, and afterwards in separate State conventions, and perfected a new, more perfect, supreme and universal law. They created *(pro tanto)* a sovereign legal person, the Government of the United States, and endowed it with certain sovereign attributes, reserving, however, the residue to themselves and their people. Now, I would like to know, where is there a loophole for bringing in an iota of supreme or universal law binding all the States and all the people outside of the Constitution for the government aforesaid? You may amend it, but you have to have the consent of three-fourths of the States, and the amendment must of course have reference to the recognized objects of the union.

Apply this reasoning to the question before us, it follows that, as the United States have no supreme universal law given them as to the rights of persons in the Constitution, on the contrary as they are forbidden in the bill of rights to interfere with them, there is no supreme or universal law on that subject in force, and that in its absence State law rules as cases arise. This ousts your law of nature; it can't take effect, because a power, supreme on the point, a State has established another law which, by the reservation above spoken of, is the authority until abrogated by another supreme law. This disposes also finally of that *ignus fatuus* of the Chicago Platform—the "normal condition."

You say: "The Constitution recognizes slavery in the States which sanction it." A complete mistatement of the Constitution, unless so claimed as a result of the reservation of all things to the States, not specially delegated to the United States. The word "recognize" is a bad word in this connection. The States recognize the

General Government, not it the States and their institutions. The father recognizes the son, and not the son the father. Property is property, because it is such by State, common or statute law, that law is its claim to recognition, it needs no other.

The fugitive slave clause, to which you again refer, is an international agreement between sovereign States binding themselves not to discharge, in pursuance of any law of their own, but to deliver fugitive slaves. It is strict law, *(jus strictum)* as all international agreements are, and I think it very questionable whether the United States have power to enforce the agreement. It may have power through proper suits in the United States Supreme Court. No idea did or could prevail that the United States could pass a law or regulation discharging a slave, hence no provision against such a law or regulation was made. So, too, in the territories, no one ever thought that therein the United States or the territories themselves could abrogate property rights existing by State law, as all knew that sovereign State authority could alone change the law in actual existence.

One word as to your "elementary" principles, another word, I suppose, for "normal condition." Agreed that it takes a law (though not necessarily a statute law) to hold a slave. Very well! Is there not such a law upon the slave brought into a territory? Where is your law to make him free? You answer, the slave law died at the State line. Not true, answers all history! The Phœnician, the Greek, the Carthagenian, the Roman, the Dane, the Norman, the Hollander, and particularly the Englishman, carried with them to their colonies or outside territorial possessions their home-laws; especially so in all cases where no law in the colony intervened, as there was not and cannot be in uninhabited territories. All retained the right to their servants. The very idea that in a territory owned by the parent States, the law of these States is to be declared a nullity by a leap into law-metaphysics is preposterous.

Take the case as it actually stands. Here is an emigrant from Kentucky; he has crossed into an United States territory; he has a wife, children, slaves, horses, wagons, etc. The wife now says, we are no longer married; the son says, I am my own master; the daughter claims to marry whom and when she pleases, and that a part of the family property is hers and her brothers as well as her mothers, and the slave claims to be free! Where does the law come from that holds the wife, the son, the daughter, the chattel property and the slave? There is but one answer possible, they brought it with them, and until some competent authority intervenes, it continues in the eye of all calm American, English or German lawyers. Of course the *pater familias* might, Kansas fashion, be overwhelmed by violence, but of that we do not speak."

This brings us to the point where you introduce the United States Judge, and the writ of *habeas corpus*, an introduction for which please accept my thanks, as we shall now get to law in earnest. Dropping the point, whether the United States can establish courts in territories, I answer your query as to a return to a writ of *habeas corpus*, as I answered it in my speech delivered September 11, 1860, at Wooster, Ohio:

"To test this whole question, suppose we go as briefly as possible through the forms of a judicial trial. Let the scene be laid in Kansas, and let us suppose the owner of a slave, and the slave before the court on the writ of *habeas corpus*.

"The owner, though not strictly required to do so, fortifies his right of ownership by a certificate under seal from a State Court, that he is the lawful owner of the man in court, and there he rests his case, claiming that he is possessor in fact, and that full faith and credit must be given within the United States to the records of the several States.

"The attorney for the liberating party now asks for the discharge of the slaves as a free man:

"1. Because, there being no law establishing slavery, freedom is supposed to be the rule.

"2. That the law of Kentucky is not in force beyond its own jurisdiction.

"3. That freedom is the normal condition of the United States, and the owner must prove his property by a law of the territory.

"Will not the Judge reply as follows?

'"I hold in my hands the record of a sovereign State of the Union; it proves the relation of these two men to be that of master and slave; I cannot go behind this record, unless you prove a valid law passed by sovereign authority, for this territory prohibiting the existence of such a relation here. I cannot presume a negro to be free by natural law, when the record proves him to be a slave. Freedom is not the normal condition of colored men in this republic, neither in the States, nor in territories. In fact there are few, if any, normal conditions in the United States, as to domestic matters. The marriage of one man to one wife may be such, on account of that being the universal custom. A court cannot make law, and where no statute law forbids it, we are bound to recognize the continuance of a legal right, which existed in a

State, and we cannot accede to the proposition, that in our territories citizens are stripped of previously enjoyed rights by mere presumptions. Laws regulating the rights of persons do not spring from the soil; *it* is neither free nor slave; colored men are both in this country. These persons came before us with their relations legally fixed, and the court knows of no law to change them. This negro is not about to be deprived of liberty, he never had it, and we cannot give it,—the master is proposed to be deprived of his property, and as there is no valid law authorizing this to be done, we cannot do it. No 'due course of law' is established by any sovereign authority acting within the territory, nor has Congress made such a provision. In fact, the tenure of property cannot be changed, nor created at will."'

It is due to you and myself to add here, that I do not claim that all the laws of a State go with the emigrant to a new territory. The real estate laws, the tax laws, and such as these do not, the reason being in their inapplicability. You also name apprentices, and I have given the reason in their case. I suppose, however, that an United States Judge would, in the case of a minor, who was taken by his master to a territory, enforce at least temporarily an apprentice contract, if beneficial to the ward. New York authorities over houses of correction for juvenile offenders apprentice children in Ohio and even to persons in territories. So their reports say.

Your reference to United States statutes, passed and approved by various Presidents as to the transportation of slaves from slave States to territories, coupled with the statement that the "ayes and noes" were not once called upon their passage, proves nothing except that proverbial legislative carelessness of which our statutes are full. The very fact that these laws were not controverted proves that they received no careful consideration. Every one of our Presidents has signed bills which, on mature reflection, he disapproved. It was at one time the policy of our Southwestern territories to prevent slaves being sold into them. They asked for a prohibitory law and obtained it; *mem. con.*, on the other hand, the very first law upon the United States statute books is one signed by Washington, re-securing to Georgia owners their slaves that had escaped to Indian tribes, who insisted on man's natural rights and had refused to deliver them up. Giddings makes Washington a slaveocrat for this and similar acts, but who believes a word of the charge?

I can hardly believe that you have well considered all the bearings of your assertion, that the United States have the same rights of property and jurisdiction in a territory as in a national ship. An United States soldier or marine surely stands to the United States Government in a far different relation to that of a citizen migrating into a territory. On this point I agree fully with that part of the sylabus of the Dred Scott decision, which was assented to by *all* the judges, to-wit: "*The United States cannot acquire territory to govern it at will.*" I never heard, however, that the United States ever set free a negro slave brought into a national ship or United States fort by an officer, and I do not believe that it can be legally done. I have seen slaves of officers on national ships even in the harbor of New York.

I will not again enter the discussion as to that fine spun theory, that the people of the several States merged themselves, when they had ratified the Constitution, in a people of the United States, and thus abrogated themselves. The law of nations holds otherwise; it says: "Though States may unite themselves so as to represent, as to other Nations and States, together, a single independent moral or legal person (an international total power), yet they do this without prejudicing the individual sovereignty of each of these States." The language of the Constitution, "we, the people of the United States," is not a mere name, it is a description of an actual fact, which is, that States *united*. Our General Government was made by the States for the States and their people, and whenever it ceases to recognize its origin, or flies from its orbit, it becomes the duty and the right of the States to check it, as they did in 1798, and if it wont be checked to change or abolish it. The rights of the States and their people are the paramount object of that Government—they should never be unwarrantably invaded. I do not say that this has been done with that odious obstinacy with which the King of Great Britain oppressed our Colonies; but there is a prodigious leaning of our now pondersome General Government towards an undue exercise of power, which, though it were ever as it was previous to the 4th of March, administered by Democrats, warns us what it may become any moment if the Ship of State should drag from her moorings, and be entirely controlled by its office-holding crew. You think our present troubles due to States Rights doctrines, I lay them to their violation. You say, if State authority had been the real origin of our Constitution we should have been torn by civil war forty

years since. I believe that we have been kept from civil war because we had States free minded like Kentucky and Virginia were in 1798, as a balance wheel in our Government. All governments have their historical natural symmetry, without which they are uncontrolable. In England it is the Commons, the Lords and the King; with us it is the People, the States and the Central Government. May you and I never be compelled to see our affairs governed without either of these three powers as checks upon each other.

Your argument, that it makes any difference whether State Legislatures and State Conventions ratified the present Constitution is badly taken. States and their people were represented in both. I never seperate in my mind the people of a State from their State. In the Constitution I have at heart the "sixth Article" is never left out. I am for the proper exercise of all authority actually granted, but there I stop. I have said so repeatedly and now repeat it.

Your special plea about the transfer of allegiance by Connecticut to a Senator of the United States, is a little obtuse to me. Do you mean to ask me whether an United States Senator should remain in the United States Senate after his State has by a Convention, called and elected by the people, decided to leave the Union? I answer, I, if I were a Senator, would not remain if I were satisfied that the Convention was fairly called and elected. I do not, however, agree to the idea Mason, as you say, advances, that no allegiance is due to the United States by a Senator. To be sure the word *allegiance* has a royal ring in it, which makes it a bad word to use in United States matters. An Englishman owes allegiance to his King. We owe the Union (using the words of Washington in his Farewell Address, who never used the word allegiance,) a cordial, habitual and immovable attachment. An United States Senator owes truth and support to the United States, but he owes it also to his State, and to impress that idea fully the Constitution requires him to be a resident of the State he represents.

Why will you persist in stripping our system of this double duty, and why do you desire to concentrate all allegiance into our General Government? I see no trouble in a Senator or any citizen being true to his State *and* the Union, as long as each keeps its place. Trouble comes when the two come in conflict, when each wants a *whole* allegiance while it is entitled only to a divided one, and I pity from my soul the poor citizen who, true to both, is denounced by those false to one or the other, because he can't forget his duty to *both*—the Union and the States.

Your associating me with Mason and Wigfall, both strangers to me in more senses than one, does not alarm me, though it may be dangerous to be so conjoined.—I am getting used to have myself associated with various political scapegoats of current party prejudice. A little while ago they put me in line with Chase and Seward and made me an abolitionist.—Well! well! I have got out of that company, and in time it will be seen that I do not affiliate with the others either. As politics now move, to be consistent as a partisan one would have to sanction all the inconsistencies of his party. This I will not do, but prefer to *appear* inconsistent while I *am* really consistent. The cheapest consistency is party consistency, it is that of a soldier who sticks to the bread wagon. I have none of that consistency. So you are welcome to conjoin me with any body, and if associations of names must be had, join me with the unpopular men, for I have a kind of feeling for them, if only to show my independence!

But let us return to the argument. You and I are citizens of the United States, and we are also citizens of Ohio. I, at least, was sworn by General Harrison as Clerk of the Common Pleas of Hamilton county, to support the Constitution of the United States *and* of the State of Ohio, and this is the universal practice in all naturalizations. I wrote for our present State Constitution, the clause requiring the *double* oath for all officers to support both the United States and the State Constitution. You are to-day under that double duty, whether you like it or not, and so is every United States citizen.—Why should we object to this? Why should the General Government absorb all our faith? Why should it crowd out the States? Why not admit the whole truth, so wholesome to all, that in all things granted to the General Government the States are subordinate, but in all things *not* granted the United States Government is subordinate? And why deny the further truth that in some things both classes of government are co-ordinate with each other? This double fealty is inseparable from our structure of government, and I never found any difficulty in it. Your mixing citizenship with it jostles the point a little, but habituated as I have been from early life to local, State *and* national citizenship in fatherland, I

do not become confused, and true as the needle to the pole, I return to the fact that there was and is a people in each State, and *as such* they form the people of the United States. Take the people of the several States away and where is the people of the United States? You are no doubt familiar with the Irishman (I wonder why that story was not put on my countrymen) who, in sawing off a limb of an apple tree while sitting on it, felt something "drop" and found it was himself. It is precisely a case in point for those who labor to get the people of the several States out of the United States, for then the whole thing will drop from under them and they with it.

I did not say, as you seem to suppose, that polygamy could be declared unlawful by an United States Court or Congress, *because* it is inconsistent with the peace of families, good morals and public prosperity, *because* it is one of the "twin relics of barbarism," all matters with which our General Government has nothing to do. I did assert that our federal authorities might, under the necessities of the case, with perfect propriety, announce as a public notice to all concerned, that plurality of wives violates the universal custom of all the the people of all the States of this Union, and for that reason it is an infraction of the common law and usage of the land. That would be as true of polygamy as it is false about slavery. If the lawful marriage of one man to one woman were not our universal law and custom, the United States Court would not so decide, however barbarous polygamy might be in its opinion, because, when the Constitution is silent, and where there is no universal usage or law in all the States, an United States Court does not go abroad in the vast field of morals to find a common law for the United States, for its province to find law is at home in our land and among our people, their law is its law and so it must declare it. What I have here said of a court is true of the President and of Congress, and also of the people, or a majority of voters. The latter have no larger powers of component parts of the Federal Government than the Constitution gives that Government, and neither courts, nor Congress, nor the President, nor the people can, when acting within the Federal Government, *do as they please.*

Our discussion may now be considered as closed in accordance with your wishes. I am glad we have had it, for I frankly admit it has made many points clearer to me. Please accept my thanks for the pains you took to convince your junior of what you would call the errors of his ways, and do not get angry if I inform you that he has most of them yet. It is too plain for concealment that the good old Democratic States rights axioms are deeply engraven on my mind, and that yours is steeled against their approach. The line of the Kentucky and Virginia Resolutions of 1798 divided us at the outset, and they separate us still.

Allow me now to recapitulate the points I have sought to establish:

1. The Government of the United States is not sovereign *per se:* it has no inherent original powers.

2. The Government of the United States is sovereign towards foreign nations, being so created by the States and their people, but the States are still individually sovereign, and in them rest *all residuary sovereign powers.* This residuary sovereignty is a necessary ingredient of our Federal Government, as without it we have no efficient means to watch, check and to contol it.

3. The Constitution where it speaks is the supreme law of the land, and so are all constitutional enactments. In their absence, a legal status fixed for persons in a State or States remains until abrogated by a law enacted by sovereign power.

4. A universal law or usage in all the States in the Union alone justifies the General Government to so proclaim it, for instance, the marriage of one man to one woman is such a law and usage.

5. A right of property, lawful in any State in this Union, remains such in the territories, and nothing short of sovereign State authority can abrogate it.

6. The United States Government has no powers whatever to establish or to abolish slavery.

7. All personal relations, slavery included, are sectional under our federal system, and they have a right to be so. They do not require the recognition of the Federal Government to make them lawful. The right to determine upon them existed before the Constitution and outlives it; it belongs to the States and the people thereof.

8. A strong federal government towards foreign nations, and a weak one towards the people and the States, are the best conditions of the welfare and perpetuity of the Union. The British Government is the best in Europe, because it has both these attributes better than any other. Sir Robert Peel saved the English people from a revolution by yielding at the right

time; Louis Philippe lost his throne by resisting until it was "*too late.*"

9. The United States Government has no powers, except those clearly granted in the Constitution.

10. "The people of the several States" are the grantors of the powers of our federal system, without them there is no people of the *united* States.

11. When the present United States Constitution was made there was no *tabula rasa*, rights of property existed in lands and goods and in slaves, which remained as unaffected by the United States Constitution as they did by the Declaration of Independence.

12. That joint purchasers and owners of land cannot object to the settlement thereon of a co-purchaser and owner with his family or property for causes known when the joint purchase was made, and not then explicity stated in the purchase contract.

And now, having closed our discussion. what do you say to publishing our letters? I do neither desire it nor would I object to it, and if you are willing I am, but wish to revise my letters so far as inaccuracies of language have crept in. I wrote most of them amidst interruptions of business, and they are the result of deep convictions rather then of studied effort. The copies I took of my letters are imperfect, so in case their publication is determined upon, I would have to ask you to return me the letters themselves for the above purpose.

I leave the determination to you, and presenting my most respectful compliments to you and also to your estimable lady, whose time has been so much employed in this matter, I remain, in spite of political differences, yours, with the highest esteem and regard,

CHAS. REEMELIN.